United States Court of Appeals
for the Second Circuit

APPENDIX

76-4147

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-4147

B

P/S

AAACON AUTO TRANSPORT, INC.
Petitioner,

v.

INTERSTATE COMMERCE COMMISSION
and UNITED STATES OF AMERICA
Respondents.

ON PETITION FOR REVIEW OF AN ORDER OF
THE INTERSTATE COMMERCE COMMISSION

RECORD APPENDIX

VOLUME 2

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IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AAACon Auto Transport, Inc.)
)
Petitioner,)
)
v.) No. 76-4147
)
INTERSTATE COMMERCE COMMISSION)
and UNITED STATES OF AMERICA)
)
Respondents.)

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Exhibit 121?

a This is the only one I think I have with me, yes. It has been such a long time, trying to get this claim settled. And, I have been denied so many times that the papers I think have gone astray here and there.

Q I refer you to EXhibit 119 which is a letter sent by Carl Ferreira, did you write that letter?

A Yes, I did.

Q I have what appears to be the original of that letter. Would you look at it? Is it blue typeing, do you recall typing that?

Mr. Browning: May I see what they -- what the witness is looking at?

Mr. Reilly: The Exhibit is a copy of a carbon.

Mr. Kiel: I understand.

Mr. Reilly: What does the blue ink have to do with it?

Mr. Kiel: I am just trying to help her see if that is something that she might recall. She might have a blue typewriter ribbon in her typewriter.

The Witness: I don't have a typewriter, sir. I borrowed a typewriter to write that.

Q (By Mr. Kiel) This letter you sent to AAA Con was unsigned; isn't that a fact, neither your signature nor Mr. Ferreira's, your husband?

A Oh, wait a minute. This has got to be a copy. The letter that we sent to AAA Con was signed. It certainly was.

Q Then, our file has a copy of that. Do you recall signing your name to it?

A No, sir, I did not sign my name. My husband signed it.

Q Now, do you know a George Ferreira?

A George Ferreira, yes, I do.

Q And who is he?

A He is my brother-in-law.

Q And did you authorize him to attempt to settle this claim?

A I certainly did.

Q And he has reported to you his conversation s with AAA Con?

A I have spoken with Mr. Ferreira just once since then. I had to call and ask him to send these papers down.

Q Do you recall receiving a communication fromMr. Zola on the letter dated April 13th, 1971, a copy of which was sent to the Interstate Commerce Commission office in New York?

Mr. Browning: Are you showing -- what are you showing her?

Mr. Kiel: I haven't shown her anything yet.

Q (By Mr. Kiel) You said there were several letters, you didn't recall?

A Yes, there was quite a few.

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Mr. Browning: May I see what Counsel is referring to?

Mr. Kiel: You certainly may. Our copy was sent to a Mr. --

The Witness: No, sir, I do not remember receiving a copy of it.

Q (By Mr. Kiel) There were some things, but you don't remember this one?

A I do not remember that one, no, sir.

Mr. Kiel: I have nothing else further.

Thank you.

Mr. Reilly: Mr. Browning?

REDIRECT EXAMINATION

Q (By Mr. Browning) You said you talked to Mr. George Ferreira recently?

A Yes.

Q When was that?

A Last week. Last week I called.

Q Did you -- did he tell you what the current status of the claim, of his end of the claim was?

A Well, he said that they were sitll giving him a runaround but he said he calls them every week or two weeks and they tell him something different and that this last time they requested some papers be sent to them for insurance.

Q When was that? Do you know when he received the request? Did he tell you when he received the request?

A He said that -- I called him -- I don't know, Thursday and he said two weeks previous to that, two or three weeks previous to that he had sent some papers to them.

Q You called him last thrusday which would be January the 13th?

A Yes.

Mr. Browning: That is all I have.

Mr. Reilly: Any objection to any Exhibits, 115 through 121?

Mr. Kiel: No, sir.

Mr. Reilly: Exhibits 115 through 121 are received in evidence.

(Bureau's Exhibits Nos. 115 through 121, witness Ferreira, were received in evidence.)

Mr. Reilly: Let's take a short break.

(Whereupon, a short recess was taken.)

Mr. Reilly: Are you ready with your witness?

Mr. Browning: Yes, sir.

I will call Mrs. Myrtis Fauntleroy.

MYRTIS FAUNTLEROY

was sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) Would you state your name, please, Mrs. Fauntleroy?

A Myrtis Fauntleroy.

Q Could you spell yor name for the reporter, please?

A M-y-r-t-i-s.

Q And your last name is spelled?

A F-a-u-n-t-l-e-r-o-y.

Q Would you state your address, please?

A 5470 S.W. 76th Street.

Q Was that Miami?

A Miami, Florida.

Q What is your occupation?

A I am a widow.

Q Did you have a former residence other than Miami?

A Yes. New York.

Q Whereabouts in New York?

A Long Island, New York, 305 5th Street, St. James, Long Island.

Q Okay. Did you move from that address to the current address that you gave -- that you just gave?

A I did.

Q Here in Miami?

A Yes.

Q when was that move accomplished?

A In December of '70.

Q Do you recall what common carrier you used to move for your household goods?

A North American Airlines.

Q Van Lines?

A Yes. It was Bolton's. It was a local moving company, but they were affiliated with North American Van Lines.

Q Did you use anybody to get your car down -- did you drive your car down yourself?

A No, sir.

Q Did you have it shipped?

A I sure did.

Q And whom did you use for that?

A AAA Con.

Q Auto Transport, Inc.?

A Right.

Q Do you know how you got thename of AAA Con?

A Through my moving van.

Q They recommended them to you?

A Right.

Q What arrangements did you make and with whom to have your car shipped in the -- whom in the organization of AAa Con?

A I called after the moving man recommended AAA Con I called him -- AAA Con and I spoke with a Mr. Backer.

Q Backer?

A Backer.

Q How do you spell that?

A B-a-c-k-e-r.

Q Okay.

And what arrangements, if any, did you make with him?

A Well, I told him that I was moving and I wanted someone to drive my car. Prior to that -- may I make a remark?

Q Yes.

A My son had visited me in November and he told me, he says, "Mon, don't let just anyone drive your carthrough. Get a bonded, reliable, dependable driver." Which I did. That's what I thought I was doing by getting AAA Con.

Q How did you think that?

A What?

Q Why did you think that?

A He told me.

Q Who did?

A A mr. Backer, when I called him on the phone.

Q Did you get any advertisement from Mr. Backer of AAA Con?

A Yes.

Q Do you have that with you?

A I do. Right here.

Q Would you just read from the advertisement which is dated what date?

A It is dated December the 1st and that is the date that I called him.

Q Now -- 1970?

A Rihgt.

Q And is it addressed to you?

A Right. Mrs. Myrtis Fauntleroy.

Q It has a letterhead of AAA Con Auto Transport, Inc.?

A Sure does.

Q Would you read from that, please, the document, the part of it that relates, if it does relate, to bonded, reliable service?

Mr. Kiel: Mr. Examiner, if I may. We have a t least 10 copies of the same copy in evidence in this procoding.

Mr. Reilly: I know we do. I think we have a great deal more. This doesn't relate -- it relates to her -- how she arrived at the conclusion as to the reliability of the carrier.

Mr. Kiel: We could establish what paragraph of the form she is referring to and avoid burdening of the record with what is repeitive.

Mr. Browning: Mr. Examiner --

Mr. Reilly: Nevermind. Go ahead.

Miss Witness, will you go ahead and read that portion of the letter to which you refer --

The Witness: Do you mean the entire --

Mr. Reilly: No, the part that led you to believe that this was a reliable, bonded carrier.

The Witness: Well, that isn't in this report. He told me on the phone when I talked with him that they were a bonded reliable carrier. This was the phone conversation.

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Q (By Mr. Brown) And then he sent you that document?

A That's right.

Q Mrs. Fauntleroy, would you compare that document with one that I am going to show you which has been identified with another witness as Exhibit 112. Is that basically the same document?

Mr. Kiel: Mr. Examiner, I object. I asked that that be done and you indicated that it wasn't permissible and now I submit that it -- that if it wasn't permissible for me to ask to have it done, I submit the same should be ruled with respect to Mr. Browning.

Mr. Reilly: I completely misunderstand you. I don't see what the relevance of, or what the connection is between that ruling and the statement that you just made now.

Mr. Kiel: The relevance, Mr. Examiner, is that I asked in an effort to eliminate having papers read in from the similar advertising document that we refer to one that was already in the record.

You indicate no, that you were going to permit the woman to read from the document. Now, when she decides that the information which she was going to give was not from the document and we have Mr. Browning --

Mr. Browning: I will withdraw the question, Mr. Examiner.

Q (By Mr. Browning) Now, Mrs. Fauntleroy, continue on. After you received that piece of correspondance from Mr. Backer

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-- is that whose name appears?

A Yes, his name is on here.

Q Okay.

What happened? Did you make any arrangements to have the car picked up or did you make any contract with Aaa Con?

A First when I received this copy I contacted my insurance company which is paramutual. I contacted him and he in turn contacted his superior and then he called me back -- I don't know the dates, but it was within the week -- and told me -- I wanted to be sure. I tried to be sure. I thought I was --of having my car delivered as it was.

So, that is why I took the caution and I called my neighbor, a man which has been a friend for years and being I'm a widow I didn't want to take chances on doing things that I would be sorry for, sor I called him and I had him to read these papers.

And, he in turn said, "They are all right." And he signed -- filled them out, rather, and I signed them.

But, I want to make a statement. I only received this one, these two papers, plus a pink copy. I did not receive a bill of lading at the time.

Q All right. Would you tell me what these two papers are? Now, will you read?

A The freight bill, I presume.

Q What is this document here?

A This is a freight bill.

Q One is a freight bill?

A Yes.

Q All right.

The second document to which you have just referred is what? Is that an advertisement or what? Can you describe the nature of it?

A I am not capable of describing it. It is just a description of the services.

Mr. Browning: Will you stipulate --

Mr. Kiel: I certainly will. It is the same as all of the other documents.

Mr. Browning: It is the same as the other ones.

Mr. Kiel: Let's see if it -- except for the filled in material I stipulate it is the same form, the same form as 112.

Q (By Mr. Browning) All right.

Now, you had your neighbor look at those two documents?

A Right.

Q Which you have just described to us and which have been identified, and based on that what was his recommendation, if any?

A He seemed to think it was all right as far as it was, this paper.

Q Now, what occurred next in the chain of events?

A Prior to that when my son was talking with me he said, "Mom, be sure to take your car and have a complete tuneup and get tires before shipping."

Q Did you?

A I sure did.

I took it to Sears, our local sears there in the shopping mall in Smithhaven and I had it tuned up and I had three tires put on and it was one tire that had never been used, the original tire of the car which made four new tires on the car.

So, I had the car tuned up and that was the same day that I mailed him the check for $89.

Q You mailed him a check?

A Yes.

Q You mailed whom a check?

A AAA Con.

Q Do you know if that check was negotiated by AAA Con?

A Yes. I have it.

Q It is right there underneath that.

A oh, yes, yes.

Q Is that a cancelled check?

A Right.

Q All right.

You made a payment to AAA Con?

A Yes, I did.

Q Then what occurred after that, after your tuneup? Did you drive the car very much after that by the way, after your tune up before it was picked up?

A Very little because I was very busy getting myself ready to be shipped to -- I was busy packing.

Q Do you recall when you got the tuneup?

A Yes. The 7th. The day I mailed the check.

Q The 7th of what?

A December, 1970.

Q Now, what arrangements, if any did you make with AAA Con for either your delivery of the car to them for shipment or their picking the car up for shipment?

A I wrote them a letter when I sent this check, and explained to them in detail of my plans and told them that I was leaving town on the 16th and would theyplease pick the car up and I gave them the address here, to Mrs. Deitz.

Q Mrs. Deitz would be whom?

A What?

Q Who is Mrs. Deitz? Not you?

A No, it is a friend. That is were they were supposed to pick the car up.

Q Had you moved out of the house by then?

A Yes, oh, yes. I had moved out and I was staying there until the car was picked up.

Q Then you were staying with Mr.s Deitz and you gave them the address of Mrs. Deitz?

A Right.

Q And what happened after that?

A Well, I didn't hear from them any more until the -- around 10:00 in the morning on the 16th they called.

Q Of December?

A Right.

Q And who called you, do you know?

A It was Mr. Agnew. And he called and wanted to know how he would be able to get out to pick up the car and we in turn had to explain to him how to get out by Long Island RAilroad. And we drove to the station and picked him up.

And he -- I had him to drive my car so he would become familiar with the car and we went home -- or to Mrs. Deitz' home, rather. And, as soon as we got inside the door he immediately sat down to the piano and began to play. He said he was a concert Pianist and giving his information of being a manager of a show people and the concert -- at least three-quarters of an hour.

Q You mean the man who picked the car up, or was going to pick the car up sat down and played the piano?

Mr.KIel: Mr. Examiner. I move to strike it unless it is shown to be relevant.

Mr. Reilly: I think the condition of the mind of someone who is goin gto drive your car 1200 or 1300 miles is relevant.

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The Witness: May I go on?

Mr. Reilly: Yes.

The Witness: After playing the piano for three-quarters of an hour -- I was sitting in the kitchen waiting for him to finish -- and he finally came to the kitchen and threw a yellow piece of paper down in front of me and he was in an extreme hurry and said, "Please sign here because I have to go."

Q (By Mr. Browning) Wat yellow paper is that now?

Let me refresh --

A That is the --

Q This is in your file?

A Right.

Q That is a picture of the man who -- Mr. Agnew?

A Yes, that wasn't on there at the time.

Q Is that Mr. Agnew?

A Right.

Q Do you want to put your specs on to make sure?

A This is not Mr. Agnw. This is the driver of the car that I didn't know anything about at the time.

Mr. Browning: Mr. Examiner, I would like to have marked for identification a single-page document, a bill of lading which the witness just refferred to.

Mr. Reilly: It will be marked for identification as Exhibit 122.

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(Bureau's Exhibit No. 122, witness Fauntleroy, was marked for identification.)

Q (By Mr. Browing) Mrs. Fauntleroy, would you identify this document, the document that you signed, minus the picture -- and, were any fingerprints on the document when you signed it?

A No.

Q This is blank. You signed the original document, I take it, not the -- not that copy?

A This one I signed.

Q The one you have in your possession?

A This one. Thereis no writing on it at the time only the heading.

Q Well now, first, will you identify this 122 as being a correct copy of that document which you have in your possession, ma'am?

A Yes.

Q That you are referring to now?

A Yes, to the best of my knowledge, yes.

Q Didyou sign hat document? Is that the one that Mr. AGnew gave you to siwn?

A Right.

Q Would that be the original of it or one of the copies, apparently; is that right?

A Yes.

Q Now, would you tell us the circumstances under which you signed that document?

A Well, as I stated previously he came to the kitchen and hurridly took this out of his pocketand said, "Please sign here." I'm sorry. He didn't say "please." He said, "sign here because I have to go."

And, I asked him what was this all about and he said, well, that is to signify that there is no dents or damages done to your car.

Q Is that what he told you specifically?

A Yes. That is what he said. Mr.s Deitz was there at the time and heard it.

Q Did he take the document away from you at that time for copies of it?

A Just this one is all I had.

Q Where did you get that one thatyou have?

A This one was mailed to Mrs. Webber, Mr. Webber.

Q In other words, he gave you copies of a document to sign the original of?

A Right.

Q And you signed them and he took them all away?

A Right.

Q Did you read the printed matter that appears?

A He wouldn't give me time. He was in a hurry to go.

Mr. Kiel: Well, I assume that the answer was no, also, that you didn't read it.

Mr. Reilly: WEll, I think it is implicit in her answer.

Q (Mr. Browning) You didn't readit?

A No.

Q What happened after that?

A He left and took the document with him and left.

Q Did you see that gentleman again, Mr. Agnew, did he come back to see your or --

A Oh, yes.

Q And when was that?

A WEll, less than a half an hour he returned, saying the car was experiencing mechanical difficulties and the gas tank registred empty.

Q What did you do about that?

A I immediately got in the car and I drove it to the gas station and had the tank filled. Itcost me over $7 to have the tank filled. Then I got in the car -- we were in the car-- and I drove down the parkway to test the car out and there was no trouble. He claimed that the car had no pickup.

Q Was he with you at the time?

A Oh, yes. He claimed the car had no pickup. But, I got in the car and it had pickup because I drove it and tested it.

Q How did you test it?

A I stepped on the gas and it shot forward. I released the gas and it would stop. Then again I would press the pedal and it would go.

Q Did he have any comment to make?

A He himself said, "Well, I guess it just needed gas."

Q Then what happened after that?

A We went back home and he took the car and left.

Q You went back to your friends?

A He took me back to Mrs. Deitz, yes.

Q And he left with the car?

A Right.

Q What occurred next as far as the car was concerned?

A I didn't hear any more from them. I took the plane that same day to my son's and around the 19th or 21st, it was, my friend here, Mrs. Webber, where the car was supposed to be delivered had received a phone call from him, this driver. I can't pronounce his name. I can't read it.

Q You can't pronounce it or you can't read it?

The man whose picture appears on that document which has been marked for identification as Exhibit No. 122; is that right?

A Right.

Mr. Reilly: I think if you take ityou can read it.

Mr. Browning: Arthur Henry Koffer, it looks like to me.

The Witness: Well, he called to Mrs. Webber and told them that the car was experiencing a difficulty and she in turn told him that she couldn't do anything about it and she gave him my son's name and address and he in turn called my son.

It was late at night and we were all in bed sleeping. My daughter-in-law answered the phone, but she told him that she was sorry, it was late, I was asleep and she refused to awaken me.

Q Okay.

A So, the next morning when I got up she told me what had happened. So, I called Mr. Backer from AAA Con in New York.

Q What did she tell you now. I don't think we have that.

A She told me about having received the phone call from the driver of the car. He stated he was the driver and he was experiencing difficulty.

Q And then you called Mr. Backer?

A Right.

Q Okay.

That was the next.day. What happened then?

A Well, there was quite a discussion on the phone and I couldn't get any information from him as to what was wrong with the car. I asked him if he would call my son and tell him with regard to the difficulty and eh said, "No, I will not. I am a busy man." --"He can call me."

Q Okay.

x 650

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A So, my son was on the phone two days trying to get the matter cleared up and to find out what was exactly wrong with the car. But, there was no -- he still couldn't find out what was wrong.

So, I left there on the 29th of December and I flew on to Florida.

Q That is in Massachusetts where your son lived?

A Right.

So, he in turn, as I was leaving told me that they had informed him that the car would be delivered without any further delay or any repairs, or gave him that impression. So, we didn't hear anything more.

Q All right.

Now, you were in Florida this time?

A Yes. That was the 29th of December.

Q What wer e you using for transportation in Florida?

A I had no transportation.

Q What occurred next in this chain of events in connection with your car?

A On the 30th of December I phoned the AAA Con office and they informed me that the car in New York was being held up for repairs. They also disclaimed any responsibiilty and said that I would have to deal directly with the New York office.

Q All right.

X651

A That was the Miami office I called on the 30th and not New York.

Q All right.

Then what occurred after that?

A I didn't hear anything until the 4th of January.

Q What did you hear then if anything?

A I phoned my attorney in New York, at that time I was desperate to know what was wrong with my car and where it was and in what condition. So, I called my attorney and asked him to please check on it for me. I received a letter from him on January the 14th, dated January the 12th. He said that the car was being held in the EAstborough garage and he informed that there was nothing that I could do except authorize repairs on the car.

But, I sitll didn't know what was wrong.

Q Did you authorize the repairs to the car?

A Yes.

Q How much were the reapirs?

A He authorized me to call the garage which I did. I didn't call. I had Mr. Webber call for me and he called and they told him the estimate would be between $35 and $38, to repair it.

Q Was your friend, Mr. Webber in Miami?

A That's right.

Q And what was the price for it do you recall or did he tell you?

A He wrote down what was to be done on the car. The garage man told him they had already had a minor tune-up on, two spark plugs, P.C. Valve and a gas filter, which an estimate of $25 and they said they would have to install a new carburator at the expense, and it would be between $35 and $38 and that they would call Mr. Evans when the work was done.

Q Mr. Evans was--

A Of AAA Con.

Q Right.

And, did you authorize the repairs?

A I gave Mr. Webber permission to tell them to do the work, to have it doen.

Q And did they do the work?

A Yes.

Q And did you pay for the work?

A I did.

Q And do you have a bill?

AI wired them, they demanded the payment before they would release the car.

Q The payment for the repairs?

A The payment for the repairs plus storage.

Q Storage of what?

A Of $80.

Q What was the storage for? Did they give you any indication of what tha t was for?

A No, indeed, no indication of what it was, just storage fees.

Q Did you try to contact AAA Con at that time or anybody else in your behalf?

A I called many times.

Q Is that New York or Miami/

A Both to Miami and to New York offices.

Q Did you call collect or were youpaying for the call?

A I paid.

Q Did you talk to anybody there?

A I talked to Mr. Evans.

Q And that was in Miami or in New York?

A New York.

Q Okay.

What did he tell you? If he told you anything?

A He told me on February the 10th -- I called and there was still no car -- I phoned and spoke with Mr. Evans and he told me the car was picked up February the 9th and would be delivered on Februarythe 14th.

Q Did you ever ask Mr. Evans why you had to pay the storage of $80?

A Yes, I did. There was quite a discussion on that.

Q When was that that you asked him?

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A I asked him when I contacted him prior to the work being done.

Q Okay.

Are you reading from this that you prepared at the time or shortly thereafter?

A These are notes made from facts as they were down the line.

Q That you made yourself; is that right?

A Yes. The dates and all. I had the letters and everything.

Mr. Kiel: The Witness is -- may I look at that paper, please then?

The Witness: Which one?

Mr. Kiel: The one you were referring to.

Mr. Browning: Which one?

Mr. Kiel: The one she is referring to in her -- to testify.

Mr. Reilly: She has referred to both of them at various times.

The Witness: This is the one I am concerned with.

This is taken from this. It is the same dates.

Mr.Keil: This is what I want, so that there might not be a long cross-examination, I wonder if you would permit me to have the witness read from the first sentence on page 4 of this document which is a copy of a letter that was sent to the Interstate Commerce Commission on March the 12th.

The reason I am saying this is that it is my understanding that the $80 that has been repeatedly said to be for storage charges was in fact the total amount for repairs and all other expenses. And, rather to have this lady confused and upset on cross-examination -- if my understanding is correct it can be fixed now.

Mr. Browning: WEll, I don't understand exactly what this is --

Mr. Reilly: WEll, is it $80 inaddition to the $63 or $68 for repairs? I think this is what he is trying to get at.

Mr. Browning: Okay.

Q (By Mr. Browning) Do you know whether or not the $80 was the total charges for the repairs and storage?

A I wasn't told what that was for, just that I would have to pay the $80 before they would release my car.

Q What was -- were there any storage charges involved that you know about?

A They said storage.

Q Who told you that?

A Mr. Evans.

Mr. Kiel: Would you ask if it was just one payment she made for everything, the repairs and everything, was $80 total?

The witness: Yes, that was all that I paid at that time.

Q (By Mr. Browning) Mrs. Fauntleroy, I don't want to interrupt your trane of thought, but go ahead and tell me what happened at this point.

Now, you sent the money to Mr. Evans, was it or to the garage?

A To the garage.

Q The $80?

A Right.

Q All right.

Now, then you talked to Evans again; did you not, shortly thereafter?

A After the 4th or 5th of February?

A YEs. I talked with him -- what was that date you were asking of?

Q I believe you -- I think you indicated that you paid the $80 about the 4th or 5th of Februarv.

A The 4th, right.

Q And then what happened after that and did you call Mr. Evans after that on the 10th of February?

A On the 10th, yes. That's right.

Q Who did you call him for --

A On the 10th of February the car had not arrived -- it was supposed to arrive on the 8th. I again phoned him and asked him about my car. He informed me my car was picked up the dat before which was the 9th and that I should have it by the 14th of February.

x 657

In a few days I received another bill of lading, No. G2632 showing the car was picked up by the driver, Mr. Henry Novac on February the 10th, at the Dixie parking and was scheduled for delivery February the 14th, 1971.

Q All right. Now, I wouldlike to have you identify a document now.

Mr. Browning: Mr. Examiner, I would like to have marked for identification a single-page document with a bill of lading which she has just referred to No. G 2632.

Mr. Reilly: It is marked for identification as Exhibit 123.

(Bureau's Exhibit No. 123,
witness Fauntleroy, was marked
for identification.)

Q (By Mr. Browning) All right, now. I would like to have you compare it with the document that you have in your possession. Is that a true and correct copy of what -- is 123 a correct copy of the bill of lading that you have just testified concerning?

A Yes.

Q What happened after that now, Mrs. Fauntleroy?

Mr. Browning: By the way, Mr. Examiner. I would like to get a stipulation from Counsel here a minute. Can we stipulate that you havea copy of what Mrs. Fauntleroy is referring to now?

Mr. Kiel: Exhibit 123

Mr. Browning: No. I am referring to a document which was addressed to the Interstate Commerce Commission that she is reverring to.

Mr. Kiel: That is the --

The Witness: Yes, I sent them one.

Mr. Kiel: That is the March 12th letter that was sent by Mrs. Fauntleroy to my client. Is that what you are talking about?

Mr. Browning: Yes.

Mr. Kiel: My client's file indicates insasmuch that he received a letter from Mr. Toomany of your office, or the office in New York and that there was attached to the letter a document which I believe to be the paper March 12th and that is the reason that I have the information about the $80.

Mr. Browning: Do you want to compare them to satisfy yourself?

Mr. Kiel: No, sir.

Mr. Browning: Mr. Examiner, I would like to have marked for identification a multi-page document addressed to Mr. -- to the Interstate Commerce Commission, New York, New York, dated March 12th, 1971 signed by Mrs. Fauntleroy.

The Witness: Yes.

Mr. Browning: May I have that marked for identification, Mr. Examiner?

Mr. Reilly: Marked for identification as Exhibit 124.

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(Bureau's Exhibit No. 124, witness Fauntleroy, was marked for identification.)

Q (By Mr. Browning) Mrs. Fauntleroy, did you prepare this material inconnection with the events that you are describing now?

A Yes.

Q Was that prepared shortly after the combination of events which we will get into?

A Yes.

Q And that was sent to the Interstate Commerce Commission in New York?

A Yes.

Q If you would like to refer to that and just tell us briefly after the 10th of February when you talked to Mr. Evans of AAA Con what happened after that, just briefly if you will?

A Well, I --

Mr. Kiel: Is this going to be with reference to what is in Exhibit 124. I have no objection to 124 in evidence and thre is no sense in repeating what is in there. It says what it says.

Q (Mr. Browning) To your best recollection is this exhibit that is marked for identification as 124 describe the events in connection with the movement of your car?

A Precisely.

APPENDIX [illegible]

Q All right.

Now, what complain, if any did you lodge with the carrier in connection with this movement?

A (No response.)

Q Did you make any claim for any damage, and if so, what kind was it?

A Recently?

Q No. Originally?

A No, not at that time.

Q Isee.

You didn't tell them that there was anything wrong with the car?

A Oh, yes. Upon delivery I wrote and told them that I had received my car and I also described the condition that the car was in upon delivery.

Q And what was that?

A When the car was delivered.

Q Which was what day?

A The 26th of February.

Q To whom did you write?

A To AAA Con.

Q new York, Miami?

A New York.

Q All right.

Do you have a copy of that letter by any chance with you?

A I'm sorry, I don't. I had written it byhand and I don't have a copy of it.

Q You wrote it with your own handwriting?

a Right.

Q What claim did you assert against AAA Con at that time? Or did you assert a claim?

Mr. Kiel: Your HOnor, I object. The witness said that she made no claim.

Mr. Browning: She didn't --

Mr. Kiel: Let me finish and say what I want to say. She ssaid that she made no claim but she wrote a letter saying that she wasn't satisfied with the car's condition.

I submit that Counsel is now attempting to impeach this.

Mr. Reilly: Oh, Mr. Kiel, come off it. That is not what he --

Mr. Browning: That is not true.

Mr. Kiel: I am just trying to get the facts, Mr. Examiner, sometimes it is very difficult --

Mr. Reilly: If this is an objection it is overruled.

The Witness: I didn't understand your question when I kanswered you.

Q (By Mr. Browning) I will try to make it plainer.

A That is perfectly all right. It is my fault I just didn't understand.

Q When you wrote upon delivery of the car to AAA Con what

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did you write, do you recall?

A I explained to them in detail of the condition of the car and everything that took place, as I have it written here.

Q Right.

A Would you like me to read it?

Q Yes, if you would like to.

A On the 26th --

Mr. Kiel: Mr. Examiner, I think the witness is reading from the exhibit 124. She can just tell us where the information is on 124.

The Witness: On the top of page 5.

Mr. Kiel: May the witness be excused from reading what she just pointed out?

Mr. Reilly: You are talking about the events of February 26th?

The Witness: Right.

Mr. Browning: I think she can testify as to what her recollection is now of what the condition was, Mr. Examiner.

Mr. Reilly: I haven't read this so I don't know whether it is -- I don't know how to rule.

If you have something to add.

Mr. Browning: I think this is a fair description of something that --

Q (By Mr. Browning) All right.

Do you have anything to add to that description that you have on thetop of page 5?

A The only thing that I didn't include in here was when the driver was ready to leave he demanded the pay for an air filter and I refused to pay him on the grounds that I didn't authorize him to pay for that or have the work done and he in turn started after me up the stairway.

Q Started after you?

A Right, and very loud and noisy and immediately my land lady opened the door because she was standing inside and she had been talking with him and she immediately opened the door and he stopped. And, he insisted that I pay him and I told him that I wuld not pay him.

Q Did you pay him anything at all?

A I did not pay him one penny. I didn't pay him any because my attorney,when he came with the car I called my attorney as to what to do, for his advice.

Q Right.

A And he told me don't pay him a thing. Don't sign any papers and tell him to go. And, that is what I did. He insisted that I let him have the car for one more night so they would have a place to stay as they had been using my car to sleep in, to live in.

Q They meaning whom?

A Mr. Novack.

Q Was there anyone with him?

A His wife and child which is stated in here.

Mr. Kiel: Exhibit 124?

A Right.

Page 5.

Q (By Mr. Browning) They were using it as a place to spend the night?

A They told us that theyhad to live in the car and I can believe it because it was in an awful condition.

Q Did you get any response from AAA Con when you described the condition of the car?

A None,whatsoever. If I remember correctly I contacted you --

Q You mean the Interstate Commerce Commission?

A Right. Or not you. I'm sorry. It was Mr. Teichert.

Q Mr. Teichert IN Miami?

A Yes. And, he in turn, I think, called the Miami office and told them to get up there and get the car and clean it up and get their possessions out of my car so I would be able to use it.

Q Did they come and do that?

A No, they did not. They deliberately refused.

Q All right. Now, what --

A They informed me that I could throw his possessions out on the street.

Q What did you do with them?

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A I called Mr. Teichert and -- of the Miami office, and he -- reported the situation and asked him what I could legally do with the driver's personal possessions left in my car.

He told me to phone the local AAA Transport Company and tell them to come and remove these items and to clean up my car.

Mr. Kiel: Let the record show that the witness is reading from Exhibit 124.

The Witness: I can't remember it all. It is entirely too much.

Mr. Reilly: You may refresh your recollection.

The Witness: I did this but the man in the local office refused to send anyone out, deliberately disclaiming any responsibility. When I told the AAA Con man that I had been instructed to call him by Mr. Teichert of the local office the man on the phone who refused to give me his name became very abusive and said, "I don't care what the I.C.C. man says and I wish you would stop harrassing me." Meaning, calling and asking what to do with the things.

Q (By Mr. Browning) Okay.

A When I asked him what to do with the man's possessions he said to throw them out in the street.

Mr. Reilly: I think that's --

Mr. Browning: That's all right now.

Q (By Mr. Browning) Did you ever assert a money claim against AAA Con? A claim for money?

A Yes.

Q Do you recall when that was?

A Recently.

Q Recently?

A I am trying to find it.

Q Well, just a minute. Before we get into that was that within the last few weeks or?

A I received a letter from a Mr. Zola wanting information.

Q What is the date of that letter?

A Oh, golly, it is here, but I will have to check through and find it.

Q Take all of them out and refer to them. I am going to ask you to read them. I didn't make any copies.

A This is a reply to his letter.

Q That is your reply? Can you get his letter?

A I can't find it right now. It must be here someplace.

Mr. Browning: May I approach the witness?

Mr. Reilly: Yes.

The Witness: Is this the one?

Q (By Mr. Browning) Look at it yourself, but it is apparently it.

A It says, "From information recently received recently made available to us by the Interstate Commerce Commission it appears that there still may be a question in your mind concerning your claim against our company and our disposition thereof.

We would appreciate an opportunity to hear from you to be appraised of your current position on this matter so that we may be in a position to receive the claim -- inview of making any disposition or settlement that additional facts may warrant."

Q That is dated what, ma'am?

A November the 5th, 1971.

Q That is from Ralph Zola?

A Right.

Q Did you get any further kind of a response from Mr. Zola and if so what was it?

A I have one here dated December the 28th.

Q 1971?

A Right.

Q Did -- could you read that please?

A "I am in receipt of a copy of your letter to the Americna Fidelity Insurance Company dated December the 15th, 1971. As I mentioned to you in my letter of November the 5th we would like to proceed with your case thoroughly and in this regard we would appreciate your forwarding to us the following so that we may have all of the facts in the possession of our claims."

"First if a copy of the bill of lading which you received, second, the bill from Sears for the word done prior to the transportation of your vehicle, three, for the battery put in your car in November of 1970, four, the repair and estimate of the body to your vehicle, five, any rental bills for substitute transportation during thetime you were without a car."

"Would you please inform me if any personal property was taken from the vehicle or whether the driver, to your knowledge, engaged in the theft of any articles belonging to you."

"Thanking you for your prompt reply, I am, very truly yours, Ralph Zola."

Q Did you respond to that?

A Yes, I did.

Q And did you sent the information he requested?

A I did, all that I had in my possession I sent to him.

Q All right, was there any correspondance from Mr. Zola's, any further correspondance?

A I have not heard anything.

Mr. Browning: May I approach the witness, Mr. Examiner?

Mr. Reilly: Yes.

Q (By Mr. Browning) Wasn't there a letter ofJanuary 24th, 1972 from Zola in which he indicated he had enclosed a copy of December 21 letter?

A Right.

Q And that he had not yet received a reply?

A Right.

Q Did you reply at that time? Or when did you reply to the letter of December 21?

A I replied with one letter answering both.

Q Okay.

What is the date of that letter? Would you read it, please into the record?

A Which one is that?

Q The one -- your reply to both of his letters.

A This must be it, Ddcembr the 15th. This must be the reply to it.

Q Okay.

In other words, you replied to his letter on December 15th?

A To the best I know.

Q Well now, you have a copy of it?

A Yes, yes.

Q What does that say? What does the letter say? To whom it is addressed, first and what does it say?

A "Mr. Ralph Zola, executive vice president, AAA Con Auto Transport Company, 147 W. 42th Street. Dear sir, this is to inform you that in response to your letter of November the 5th, 1971 I am contacting your insurance company as suggested by the Interstate Commerce Commission,a copy of my letter to your insurance company is enclosed. It is self-expalanatory."

Q Did you at any time try to get the name of the insurance

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carrier of AAA Con and from whom did you try to get it?

A I received that through the insurance --

Q You said that right here, didn't you?

A Yes.

Q From the Interstate Commerce Commission?

A That's correct.

Q Did you get the name of the insurance carrier from the I.C.C.?

A Yes.

Q And then you wrote to the insurance carrier; is that correct?

A Yes.

Q Apparently AAA Con got news of that and they wrote you a letter, right?

Mr.Kiel: I object. It is a leading question, please.

Mr. Reilly: I am going to permit the answer.

Go ahead.

The Witness: I immediately received a letter from Mr. Zola requesting for five items that I had read previously, yes.

Q All right.

Now, did you write the insurance company, the name of which you obtained from the I.C.C.?

A Yes, I did.

Q When was that letter written?

A On December the 15th, 1971.

Q Now, would you read the first few paragraphs of that letter, please, into the record?

A Yes, I will. Do you want me to start from here --

Q Yes.

A "American Fidelity Insurance Company, 485 Old Country Road, Westbury, Long Island, New York 11090. Anttention: Mr. Charles Pace, vice president, policy No. 3047691319306,"

"Dear sirs, the Interstate Commerce Commission, Mr. Stephen V Toomany, the District Supervisor in New York, has informed me that you are the insurance company which insures AAA Con Transport Company of 147 W. 42nd Street, New York, New York."

"I am enclosing a copy of a report that I mailed to I.C.C. in regard to the experiences that I suffered at the hands of this company while having my car transported by them to Miami from New York a year ago."

"Please read the report for a full explanation. At that time I had not received an answer to my letter to AAA Con Auto Transport Company describing the condition of my car, the circumstances under which it was delivered and the additional expenses I had been forced to pay during the 17 days that I had waited for delivery of my car."

"In response to my report the I.C.C. wrote AAA Con and sent me a copy of their letter requesting their promtattention to the matter. Later I received aletter from AAA Con Auto Transport Company in which they stated, "I consider the files in this matter closed.'"

"They apparently considered that the $50 which I did not pay to the driver on delivery of the car to be sufficient to cover the claims against them."

"On November the 5th the wrote me another letter and -- in which they offered to review my claim as a result of information recently available to them by the Interstate Commerce Commission."

"I had given them all the facts, but they had ignored my request for a settlement."

"Therefore, I wrote to the I.C.C. in this regard and they suggested that I contact you. Also, they informed me that hearings were being held in regard to the removal of AAA Con's operating license--"

Mr. Kiel: Reading there -- that was incorrect. Would you look at your letter again, please, ma'am?

The Witness: Yes, sir.

Mr. Kiel: The word "removal" was that in the letter?

The Witness: "Renewal", I'm sorry. The typewriting is not clear here --

Mr. Browning: Excuse me. Does Counsel for AAA Con have a copy of this letter?

Mr. Kiel: Yes, we do.

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Mr. Browning: Okay.

Q (By Mr. Browning) Go ahead, ma'am.

Mr. Kiel: Mr. Examiner, are you going to have this whole thing read in the record? It is a five-page letter. The witness has only --

Mr. Reilly: Is there any reason to read it all?

Mr. Browning: Let me look at it.

Q (By Mr. Browning) Did you indicate in that letter the amount that you claimed, or the amounts that you claim?

A Yes, I did.

Q Would you just read the amounts that you were claiming? And for what -- what they were for as you have indicated?

A All right.

Repairs and storage paid to Eastborough Garage in New York, plus telegram charges for wiring them the cash was $84.65. The phone bills necessary to get information regarding delays was $50.90. The new battery and cables to replace the one substituted was $50.07, 1000 additional miles figured $100 -- 10 cents a mile, cleaning the car after delivery was $10 and the body shop estimates to repair damage of car in transit was $116.48.

And, that totalled to $500.

Q Okay.

Now, did you check the speedometer or the automobile before it left New York?

A I did.

When we got out of the car in front of Mrs. Deitz Mr. Agnew was checking the car to see if there were any damages and I pointed out to him that there was only 20,700 miles at the time, but nothing was put on the record, nothing.

Q Okay.

Now, what did the mileage read when you got it to your home in Miami?

A It was in here too.

Q I think it may be on Exhibit, --

A I have it here.

Q Go ahead.

A It showed 23,143 miles which meant a total of 2,443 miles driven since it was picked up on December the 16th, which was an extra thousand miles.

Q Okay, have you checked the mileage between Miami and New York, did you?

A Right.

Mr. Browning: That is all I have of this witness at this time. I tender her for cross-examination, Mr. Examiner.

Mr. Reilly: Go ahead.

CROSS-EXAMINATION

Q (By Mr. Kiel) Mrs. Fauntleroy, you supplied AAA Con with a copy of an estimate that you had made with respect to some body repairs; didn't you?

A Yes, sir.

I just read them.

Q And isn't that an estimate which is dated December 13, 1971?

A Give me time to check that.

Could you give me the date?

Q December 13, 1971, Midel's Body Shop?

A Yes. I have that bill.

Q Do you have time to look for it?

Go ahead.

Q Would you want to see the bill?

A No, Ihave a copy of the bill.

What was your question?

Q Do you recall that the date on the --

A Right.

Q Now, what date was your car delivered?

A The 26th of February.

Q 1970?

A '71.

Q And this was approximately 10 months later that you had the car -- the estimate made with respect to what repairs were necessary?

A Yes.

Q And these were the repairs in December of 1971, not an estimate of repairs in February of 1971; am I correct in that?

A That's right.

Q Up to that point isn't it a fact that you had never indicated to the carrier that there were any body repairs necessary?

A Oh, yes, I did.

On my report I wrote and told you of the dents on the left rear hood of the car and of scratches along the right side of the car. That is in the report.

Q What report is that?

A I think it is in the Interstate Commerce Report that I had sent to them. I think we just read it. I know what is in there.

Here it is, on page 5, in the paragraph you didn't want me to read.

Q "I can see a small dent" -- this is Exhibit 124. "I can see a small dent high on the left rear fender"

A And two long scratches the length of the right side of the car.

Q Now, I see indication that there is a right front door thathad to be fixed. Would you agree with me that there is nothing in your letter, which is Exhibit 124, that the right front door -- anything about the right fron door?

A That's right.

Mr. Browning; Now, Mr. Examiner, I object to any further examination along these lines unless the attorney for AAA Con makes available to us copies of what he is looking at so I can -- I can't see what he is looking at at and it isn't in the record. And, I submit it is meaningless to begin with and, number two, I think that we ought to have a copy of it if he is going to examine the witness on it.

Mr. Reilly: Well, at least you should see it.

Mr. Kiel: Well, if Mr. Browning would like to see it he's welcome to look at it.

You mean before I continue cross-examination or while I am doing it -- he may look over my shoulder if he would like. We didn't prepare this as an exhibit because these were from our files and we didn't intend to put anything in evidence at this time. All we are doing is conducting examination of this witness after you finished --

Mr. Browning: WEll, I think forproper examination of the witness --

Mr. Kiel: You brought this up --

Mr. Reilly: Oh, for heaven's sakes. Stop this chattering and let him see that document right now.

Mr. Kiel: (Complies.)

Mr. Browning: Do you have the original of that?

The Witness: Yes.

Mr. Reilly: Go ahead, Mr. Kiel.

Q (By Mr.Kiel) With respect to this estimate it appears that thereis an entry in the line"bumper, rear" which is marked as old damage. Is there any reference to a bumper damage on your letter which is Exhibit 124?

A Not at that time I didn't mention it, no.

Q And you -- would you look at the entry for LT quarter panel, marked top?

Do you see that?

A Yes.

Q One hour to fix that. Now ma'am, will you agree with me that your letter refers to a scratch on the lower right side and that it refers to a small dent high on the left rear fender?

A The left rear --

Q Yes, ma'am?

A The hood of the top of the car.

Q I see.

Now, can we turn to the next -- the new battery and cables. When, did you write Mr. Zola or anybody in the company with respect to a battery originally?

A It is in the Interstate Commerce Report.

Q Would you look at Exhibit 124 on page 6, is that what you are referring to?

A What paragraph?

Q Well, under the date of March the 3rd?

A Yes.

Q You replaced the starter cable and battery cable, as well as the battery?

A Yes. That's right. The first time I started to use the car.

Q Now, had you ever looked at the battery that was in the car when you tendered it to the carrier?

Mr. Browning: Mr. Examiner, I don't know that the witness --

The Witness: I don't think I would know if it was perfect or not. I am a woman.

Q (By Mr. Kiel) I Would agree, probably.

But, the point is you don't know that the battery that was in your car when it was delivered before you replaced it was not in fact the same battery that you had in the car when it left New York, do you?

A I did not look at it as I said. I wouldn't have known. The garage man informed me that it was not the battery for my car.

Q Now, with respect to that matter did you ever ask the mechanic who you had install it if -- why he installed that battery or if he installed that battery?

Mr. Reilly: What battery are we talking about?

Q (By Mr. Kiel) That was the one that later someone told you was not the right size for the car?

A What was your question?

Q Did you ever check with your first mechanic to find out

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if he installed that battery and if he didn't why he didn't?

A No, I have not been able to contact him. I have tried but I havenot been able to get any information on that.

Q Isn't it a fact, ma'am that the only information that you gave to AAA Con or to Mr. Zola in connection with your claim loss was the November 5th, 1971 -- before November 5th, 1971, was this letter which is Exhibit 124 when you indicated that it cost you $50 and seven cents to fix the battery and replace the cables?

Mr. Browning: Mr. Examiner, I object to the question.

Mr. Reilly: Well, I am not quite sure how to approach this. I mean, is he talking about Mr. Zola or -- Mr. Zola as an individual or is he talking about Mr. --

Mr. Kiel: I will restate the question.

Mr. Browning: The record will show, I believe that this witness has testified that she wrote in her own handwriting a letter that she doesn't have a copy of.

Mr. Kiel: What about that letter?

Mr. Reilly: She doesn't have a copy of it.

Mr. Kiel: What does that have to do with the objection of mine -- my question?

Mr. Browning: Well, you said this is the only letter the only information that she gave Mr. Zola is contained in Exhibit 124 and the record doesn't indicate that.

Mr. Kiel: I said something about a money claim, a

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money claim.

Mr. Browning: I object to the form of the question. If he restates it I may not have any objection to it.

Mr.Reilly: Restate the question.

Q (By Mr.Kiel) Isn't it a fact, Mrs. Fauntleroy, that the only information that you gave AAA Con or any of its representatives with respect to a claim fro money was the fact that it cost you $50.07 to replace a battery and cables in operating the car after it was delivered?

A That is what it cost to get my car in operating condition, yes.

Q And isn't it a fact that on or about November the 5th you received a letter from Mr. Zola indicating that he had certain information from the Commission that there was some question in your mind that you would like to resolve -- and I think you refrred to that letter --

Mr. Browning: Objection. She read it into the record, I believe. It is repetitious.

The Witness: I did.

Q All right, now, ma'am, and isn't it a fact that after you received the letter of November 5th and because you received the letter of November 5th you wrote AAA Con and told them that since you received the letter of November 5th you were going to contact the insurance company? And, you did that by your letter of December 15th, and you sent them a copy of the insurance letter, the letter that you wrote to the insurance company?

Mr. Browning: Let the witness have plenty of time to look at that letter you are referring to, and then, if she recalls the question --

Mr. Reilly: The letter of December 15th.

The Witness: I don't have a copy of that, I don't think. Oh, here it is.

Q (By Mr. Kiel) Do you have a copy of that letter?

A Yes, I ahve.

Q Now, isn't it a fact that you wrote to the Interstate Commerce Commission with respect to your questions after you received and as a result of receiving a letter of November 5th from Mr. Zola?

A May I read from it, the contents of the letter of December 15th letter, the notes, as to what I did?

Q Yes, you may. It is a shot letter.

A "This is to inform you that in response to your letter of November the 5th, 1971 I am contacting your insurance company as suggested by the Interstate Commerce Commission."

Q Now, insofar as the suggestion by the Interstate Commerce Commission is concerned, did you write to the Interstate Commerce Commission and they then made a suggestion that you are referring to in your letter?

A I do't follow your question.

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Q Well, let me show you a copy of a letter in my file which was sent to us by the Interstate Commerce Commission and which shows a copy to you which is dated March 30, 1971?

A Right.

Q Isn't it a fact that in that letterof March 30th, which was sent to you that there is a listing of the insurance company of the applicant and especially American Fidelity Insurance Company?

A Right.

Q Now, ma'am --

Mr. Browning: Now, wait a minute.

You said that the letter to her --

Mr. Kiel: The copy was sent ot her, yes. It is a different one.

Mr. Browning: It is a different letter. I think she is confused. That is the reason why I am --

Mr. Kiel: Well, we will get to your letter next, Mr. Browning.

Mr. Browning: Why don't you find out whether she received a copy.

The Witness: I don't seem to have a copy of that.

Mr. Reilly: Does the original indicate that she had a copy?

Mr. Kiel: Yes.

Mr. Browning: Will you look and see if you have a copy

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that?

Mr. Kiel: The original is sent by Mr. Toomany and it indicates a carbon copy to Mrs. Fauntleroy.

The Witness: When?

Mr. Kiel: On March 30, 1971.

Mr. Browning: May I look at that just for a second and maybe I can help the witness.

Mr. Examiner, I would like to have the record show that she has it here in her file. She has found it now, Mr. Kiel.

Mr. Kiel: Okay.

Q (By Mr. Kiel) Now, you found in there a letter from Mr. Toomany, a copy of a letter to you which indicated the name of the insurance company?

A Right.

Q So, you knew the name of the insurance company in March of 1971? -- one month after the car was delivered; is that right?

A Right.

Q Then you wrote again to Mr. Toomany in November, after November 5th when Mr. Zola wrote to you and you got a response from him sometime in November; isn't that true?

A What would be the date on that?

Q I noticed the letter in your file when you were going through and I think it was November 19th. I believe it was on top of the file a minute ago.

Now, that was a letter from Mr. Toomany on I.C.C letter head. It was November 30th, excuse me. That letter from Mr. Toomany to you was dated the 30th and it was in response to your letter of the 19th and you wrote Mr. Toomany again after you received Mr. Zola's letter; isn't that so, on November 5th?

A I can't keep track of all of this. It is so confusing. It is just impossible.

Q Mrs. Fauntleroy, I am trying to show you a copy from our file of a letter which was sent to you by Mr. Zola on April 5th in which he apologized for the claimed rudeness of the driver and to you -- and after you look at that for a moment, tell me if you recall receiving that letter?

A I did. And, I wasn't too happy about it.

Q You weren't happy about the apology?

A No. Because, he was rude to me.

Q Did you make available the letter of April 5th to the Interstate Commerce Commission's attorney with the apology?

A No, not at that time.

Q Well, since then?

A No, because I didn't think it was sufficient to covermy --

Q Do you recall also that the letter indicated that pursuant to the carrier's tariff the car owner was responsible for providing a full tank of gas to start the car off with?

A May I refer to this?

Q Do you recall? Iam showing you --

A I recall it.

Q And you recall also information to the effect that the tariff provides pursuant to Rules 7A that any repairs are the responsibility of owner?

This is what they told you?

A That is what he said, but that doesn't say the same as it does on these papers that I received from the driver.

Q Will you show me any papers which say that the carrier will pay for repairs for mechanical difficulties to your vehicle?

A Here you are.

Q Would you read it?

A No. 11. This was the driver's paper that he gave to me that I understand and agree that in the event of accident or damage to the assigned vehicle that the carrier will retain the driver's deposit or payment to pay for the repair of same.

Q Now, that paper that you are reading from is a --

A It was the driver's paper, not mine.

Q the driver's paper? This is a receipt that the driver signed indicating that he was not to collecct the $50 if he didn't deliver the vehicle in the condition -- in good condition.

A He is also supposed to pay for repairs.

Q In any event, ma'am, isn't it a fact that in this letter of April 5th of Mr. Zola to you again, there is an indication and I quote "I understand that there are outstanding tariff charges in the amount of $54 which you have offset against the $50 of expense that you incurred in refurbishing the vehicle?"

Do you remember that?

A I explained to you that at the time --

Q Did you write Mr. Zola between April 5th and November 5th to tell him --"I'm sorry, Mr. Zola, you misunderstood me" or that there were more expenses than the $50?

A No, I did not because I didn't think it was necessary at that time because I think he knew what the expenses were on shipping the car. My attorney told me not to pay the $50 and I obeyed his --

Q The blue driver's slip that you had you read from -- did the driver leave that at your place when he delivered the car?

A He did.

Q This is something you hadn't seen before then?

A No.

Q Now, you indicated something about the driver living in your car? Do you remember that statement?

A He told me.

Q Do you rememberit?

A I do.

Q Now, will you do me a favor and look at Exhibit 24, page

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five.

Mr. Reilly: It is 124.

Mr. Kiel: 124.

Q (By Mr. Kiel) And, under your date of February 27th, I read, "Mr. Webber then asked how long he -- and referring to Mr. novac -- had been registered there and was todl that Mr. NOvac registered on February 20 and stayed until he checked on February 26th and then returned and registered the night of February 26th?"

A That is right.

Q Now, isn't February 26th the day that the car was delivere to you?

A May I tell you --

Q Please --

A Yes.

Q Now, do you want to tell me smething, go ahead.

A Yes.

Q Go ahead.

A On the 26th of February as I wanted to read before, at 10.oo 11:00 in the morning a woman phoned saying she was Mrs. Novac and that they were on their way to deliver the deliver my car. In response --

Q Are you reading again from page 5?

A Yes. And, I am trying to explain to you about Mr. Novac.

Q What I am concerned with --

Mr. Reilly: Go ahead, Mrs. Fauntleroy.

The Witness: In response to my question she said that they had been delayed en route because she had a miscarriage and was hospitalized and -- in Washington, D.C. Mr. Novac also got on the phone and,at my request, and confirmed Mrs. Novac's story.

I told them how worried I had been because no onehad made any effort to contact me. All they said was, "I'm sorry." When I asked where my car -- where they were at the present timethey said they were calling from a travel lodge in Fort Lauderdale.

They were on their way to deliver thecar. Therefore, I expected tht they would arrive in approximately 1 hour, which isthe normal driving time between Fort Lauderdale and Miami.

They arrived at 4:30 p.m. And then the car -- I tell you, themess it was in and all fo that.

Q (By Mr. Kiel) Mrs. Novac -- you indicated you had a son. Would you as a mother --

A I am not Mrs. Novac.

Q I'm sorry, Mrs. Fauntleroy.

Would you as a mother think it unusual for a person, a husband or a wife involved in a condition that you have described to forget to notify you about the delay in delivering you your car if the situation had in fact arisen as you indiccated? Could you understand that might be a good reason

reason why people didn't think that you were concerned about your car?

A I still think they could have notified me. They might have. Within two week's time at least there should have been some time he could have called me.

Q You indicated earlier in your testimony that you contacted somebody who had your insurance -- was connected with the company called Empire Mutual?

A That's right.

Q To see about your coverage with AAA Con. You didn't indicate what the response was. What was it?

A I'm sorry, But, I don't -- I told you that he in turn contacted his superior and he told them that -- to go ahead and have AAA Con bring the car.

Q The Mr. or Mrs. Webber that you referred to from time to time is the same person or persons shown on the documents 122 and 123, Mr. Wally Webber; is that your friend?

A That's right.

Q And they are in Florida?

A That's right.

Q And Mrs. Deitz, that you referred to is a frined of yours in New York and you were living with at the time?

A I was staying for a couple of days, yes.

Q The automobile that was being transported was a 1964 Ford is that correct?

A 1964 Ford.

Mr. Kiel: I have nothing else.

Thank you very much, ma'am.

Mr. Browning: I have just a couple of questions, Mr. Examiner. I don't want to belabor this too much but --

REDIRECT EXAMINATION

Q (By Mr.Browning) Mrs. Fauntleroy, have you been paid anything at all by AAA Con or its insurance carrier up to this present time?

A No, I have not.

Q What if anything did the mechanic here indicate as to what kind of battery it was in your car,that would fit any particular model? And, did it fit your car?

A He told me the battery in my car was too small, that it was for a corvair.

Q For a corvair?

A Right.

Q What kind of a car did the driver leave in? If he left in any?

A He left afoot.

Q He left afoot?

A Yes, and arrived -- returned again -- I think it is here in the affidavit.

Q Right. Okay.

Did the driver tell you that they had been living in the

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car enroute from New York?

A Right.

Q Did he give you any indimation of how long they had lived in the car?

A They indicated that they lived in that vehicle the entire trip down, They had cooking utensils, everything in the car, clothing and everything else.

Q All right. That's all I have.

Thank you.

RECROSS-EXAMINATION

Q (By Mr. Kiel) As a matter of fact, ma'am, isn't it true that you retained part of the total transportation charges, namely, $54 which the driver had requested at delivery?

A Upon advice of my attorney.

Q I see.

Then, actually, you did not pay the full transportation charge, but retained that money as per your attorney's suggesti

or advice?

A That's right.

Q So, if you had paid the complete transportation charge you would not have had the $54 which you used for your expense

of replacing the battery and the cable; isn't that so?

Mr.Browning: Objection, Mr. Examiner.

Mr. Reilly: That is obvious.

Q (By Mr. Kiel) Now, when you were asked by Mr. Browning --

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Well, nevermind.

Mr. Reilly: Have you completed your examination, Mr. Kiel?

Mr. Kiel: May I have just one moment, please?

Q (By Mr. Kiel) You will agree with me that your Mr. Webber had indicated to you that he had checked and found out from the -- from the motel -- that Mr. Webber found out that actually that the driver had lived in the motel and not in your car; isn't that true?

A He was in the motel at that time when he called me.

Q Yes.

Mr. Kiel: I have nothing further.

Mr. Brown: I move for the admission of Exhibits Nos. 122, 123 and 124 --

Mr. Reilly: Is there any objection to the exhibits?

Mr. Browning: Is that --

Mr. Kiel: No, sir.

Mr. Reilly: Exhibits are received.

(Bureau's Exhibits Nos. 122,123
and 124, witness Faunteleroy,
were received in evidence.)

Mr. REilly: We will recess until 9:30 a.m. in this room tomorrow morning.

(Whereupon, at 5:11 the hearing recessed, to reconvene at 9:30 a.m., the next day.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

- - - - - - - - - - - - - - - - - - - x

In the Matter of: : No. FF-359

AUTO TRIP-USA, INC. FREIGHT
FORWARDER APPLICATION

- - - - - - - - - - - - - - - - - - - x

In the Matter of: : No. MC-C-7287

AAA CON AUTO TRANSPORT, INC.
INVESTIGATION & REVOCATION OF
CERTIFICATE

- - - - - - - - - - - - - - - - - - - x

In the Matter of: : No. MC-C-7287 sub 1

AAA CON AUTO TRANSPORT, INC.
PETITION FOR DECLARATORY ORDER

- - - - - - - - - - - - - - - - - - - x

Room 1510, Federal Office
Building,
51 S.W. 1st Avenue
Miami, Florida
Wednesday, January 19, 1972

Met, pursuant to notice, at 9:30, o'clock, a.m.

BEFORE:

JOSEPH REILLY, Examiner.

APPEARANCES:

PHILIP M. BROWNING, JR., Esq., 26 Federal Plaza Building, Room 1807, New York, New York 10007, appearing for the Bureau of Enforcement, Interstate Commerce Commission.

MORTON E. KIEL, Esq., 140 Cedar Street, New York, New York 10006, appearing on behalf of the Applicants and

APPEARANCES, Continued.

Respondants.

DANIEL B. JOHNSON, Esq., 716 Perpetual Building, 1111 E. Street, N.W., Washington, D.C., appearing for Auto Driveaway Company.

- - -

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WITNESS	DIRECT	CROSS	RECROSS	REDIRECT
Bureau's				
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EXHIBITS

NUMBER		FOR IDENTIFICATION	IN EVIDENCE
Bureau's			
No. 125	(Witness Raze)	1142	1178
No. 126	(Wintess Raze)	1152	1178
No. 127	(Witness Raze)	1155	1178
No. 128	(Witness Raze)	1156	1178
No. 129	(Witness Brown)	1185	1197
No. 130	(Witness Brown)	1186	1197
Counsel's			
No. 131		1197	1198

- - -

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PROCEEDINGS

Mr. Reilly: The hearing will come to order.

Mr. Browning: Mr. Examiner, I would like to call as my next witness Mrs. Raze, please.

EMILY RAZE

was sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) Please state your name and address.

A Mrs. Emily Raze, 9854 North Kendall Drive, Miami.

Q Mrs. Raze, what is your occupation?

A I am a secretary.

Q Have you lived here all your life?

A No. I am only here two years.

Q And where did you come from?

A New Jersey.

Q Whereabouts in New Jersey, ma'am?

A Well, Hackensack, basically. My last address was Hackensack, New Jersey.

Q And you moved down here about two years ago?

A January 30th, 1970.

Q Did you have occasion to use the service of AAA Con Auto Transport, Inc., in connection with that move?

A Yes, I did.

Q Will you tell us, please how you got in contact with AAA Con or how did you know about the service?

A I was ill at the time and my sister took care of a great deal of the arrangements for me. It was through her that AAA Con was contacted.

Q I see. In other words, she found AAA Con; is that correct?

A That's correct.

Q And she made the initial contact?

A Right.

Q Now, when was that, do you recall?

A It was at some point in mid January.

Q Of 1970?

A Right.

Q Now, did you make any contact or did you communicate with anybody from AAA Con at that time?

A Yes. I had a telephone conversation -- I do not know the name of the man to whom I spoke. I asked for information and directions and what I should do about the arrangements to have my car moved down here.

Q I see.

Did you make any arrangements at that time for your car to be picked up by AAA Con?

A Yes.

Q And what arrangements were made at that time to thave the car picked up?

A I arranged with them to have the car picked up at my sister's place in Bronxville, New York, as I was -- as I said,

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I was ill. I was staying with her and it would be more convenient to have the car over there because I was there at home so that whatever time the driver picked up the car I would be there to deliver ti -- give him the keys.

Q All right.

Now, do you recall when the car was picked up?

A It was a few days before I flew down here, I believe. It was about the 27th of January.

Q All right.

And then you flew down subsequently on the 30th of January?

A Correct.

Mr. Kiel: If Your Honor, please may the witness testify? I would appreciate the courtesy of having direct testimony instead of Counsel testifying. Let the witness testify. I object.

Mr. Reilly: This is also preliminary, Mr. Kiel.

Go ahead, Mr. Browning.

Q (By Mr. Browning) Now, Mrs. Raze, what were the circumstances when your car was picked up?

Mr. Kiel: Objection. If the witness knows. The witness hasn't been qualified.

Mr. Browning: I will ask her this.

Q (By Mr. Browning) Did you see anybody from AAA Con when the car was picked up?

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A Yes.

Q Who was that, do you recall?

A I didn't get the gentleman's name. He was slight, about five foot, nine or ten. He was wearing a light colored trench coart. That is all I remember about him.

He came into my sister's apartment. We discussed the fact that -- I told him that I had possessions in the trunk of the car and that I had a list of them and would he want it.

He said, "Oh, no, that is not necessary as long as the trunk is locked." I said, "Yes, it is locked." He said, "Did you have the car tuned up?" And I said, "Yes, I did everything that I was told to do."

A full tank of gas and I even gave him a receipt from the Gulf station where I had had the work -- had the car taken care of so that in case anything were to happen he would know to check that these things had been done.

Q Did he give you any indication or tell you why it wasn't necessary to give him a list?

A "Oh, don't worry about it. The car is going to be in very reliable hands. You have nothing to worry about." That was exactly what he said to me and then we had to go out of the apartment down into an open type garage. And, it was that year extremely cold. As I said, I had been ill and was recovering from having been hospitalized with what they call --

APPENDIX 701

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it was pneumonia, at the time. And, I wasn't supposed to be exposed to the elements and I was bundled up and I went down with him to show him where the car was.

I think it was down to almost zero that day. And, he checked the car, the check list that they had and there was a little dent in one of the fenders and one of the doors or something and that's all. Everything else checked out all right and it was very cold and he said,"here, sign this."

And, I said, "What do you mean? Sign what?" And he said, "Well, this is just to prove that I picked up the car. It is your receipt."

Q Excuse me.

Do you have anything in your files that you can look at to see what you signed at that time that you just testified about, the document that you signed?

A Here it is.

Mr. Browning, Mr. Examiner, I would like to have marked for identification a single-page document which is thebill of lading of AAA Con.

Mr. Reilly: Marked for identification as Exhibit 125.

(Bureau's Exhibit No. 125,
witness Raze, was marked for
identifiction.)

Q (By Mr. Browning) Mrs. Raze, I hadn you what has been marked for identification as Exhibit 125 and ask you to state whether or not that is a photocopy of the document to which you have just referred? And concerning that which you have just testified to that you signed.

Is that correct?

A Yes.

Q All right.

Now, after you signed the document did he give you a copy of it at that time?

A YEs.

Q Then what happened after that?

A He got into the car. He drove off. I waved good-bye and that was it.

Q Then I believe you testified that you flew down here to Miami; is that correct?

A Yes.

Q On the 30th?

A Yes.

Q What happened after that? Did hte car arrive?

A No, the car was supposed to be delivered to me January 31st or February 1st of 1970. That was a saturday or a Sunday and that is what I had been told.

By January 2nd I had heard nothing.

Q I believe you mean February; don't you?

A February, I'm sorry, yes.

I wasmost concerned and upset about the fact that I hadn't heard. I called my sister in New York and asked her to follow

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through for me. She called AAA Con and they told her that the car hadn't left due to the fact that they didn't have a driver.

This sort of amazed me, but I didn't understand why people advertise that they can take a car and then they don't have the driver to drive it down for you. But, that is the way they do business anyway.

She said that maybe I should contact the AAA Con representative in Miami which I did. I spoke to a Mr. Feldman. He called me back and said that my car would be leaving the 3rd and that a Mr. Bergner would be the driver and that I should receive the car by February 6th or 7th at the latest. Possibly by 4:30 on Februaary 6th.

Q Did you receive the car then on the 6th of February?

A No. I did not.

Q Whathappened?

A I got a telephone call from this Mr. Bergner on the 6th stating that he hadleft the car on the Florida State Highway somewhere outside of Fort Pierce, due to the fact that it had overheated and he couldn't run the car anymore.

And, I said, "WEll, why did you leave the car, why didn't you try and get help or wait for a State Policeman to come by and get the car towed to a station so it could be fixed and we could get it to Miami and get it delivered to me?"

He became most indignent and said, "You don't understand. I had my wife and my four-month old baby with me. That was far more importatnt to me than your car."

I said, "Well, I said you had a baby with you?" I understood that there were no passengers supposed to be accompanying the driver. That's what I was told."

He said, "Oh, well, that has nothing to dowith it." I said, "WEll, what about my car?" He said, "Youare more concerned about your car than you are about my baby." And, I said, "Yes, I am. I didn't hire you and your baby, I hired AAA Con to deliver my car."

He said, "Iam terribly sorry. There is nothing I can do about it,"and he hung up.

Then I called Mr. Feldman and he said, "I know nothing about this." I said, "Well, what am I supposed to do?" And he said he would call me back. I am still waiting for the telephone call.

I called and I called and I called. He never called me back.

Q What happened after that?

A Then my son took over because as I stated I had been ill and I wasn't supposed to be exposed to emotional pressure or any kind of excitement of this sort . I had had a heart attack and I had been hospitalized for six months later from Pneumonia and between I had lost my husband and I had had too much, and they were trying to protect me from any aggravation.

Between my sister and my sister and myself -- my son they more or less tried to handle the situation. And after repeated effcts of trying to reach Mr. Feldman my son finally picked up the phone, called the State Police and within five minutes had the car located.

Then my sister -- I believe -- this is all like third party because my son handled most of it, but somehow or other we got to Mr. Meeker.

Q Who is Mr. Meeker?

A Mr. Meeker was in West Palm Beach, the representative of AAA Con.

Q Okay.

A I don't know how we got to him -- whether it was through the New York office or what, or whether my sister did it of my son did it, but he was extremely courteous and extremely nice. He was the only one that I dealt with with AAA Con who was.

And, he himself went out at his own expense on his Sunday and picked that car up and got it to a station, towed it to a station. A Texico Station, if I recall correctly. They were not equipped to take car of the car.

Mr. Meeker said that he would recommend a mechanic who wa sin West Palm Beach who was qualified to take a look at the car and be able to fix it. The car was then towed to a place called Barney's. I think the gentleman's name -- I don't remember his name.

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But anyway, he spoke to me on the phone and he gave me two separate estimates verbally for fixing the car. One was to try and repair the motor. He told me the car had been run hot which meant that it had been run --

Mr. Kiel: I object, Your Honor, Please. What it meant --

Mr. Browning: She is simply relating what he told her.

Mr. Reilly: Is that what the gentleman told you?

The Witness: Yes.

Mr. Reilly: Go ahead.

The Witness: He told me it had run hot and I asked him what that meant and he said that your hose broke, or something borke, the radiator or something and instead of stopping when the red light went on and having it repaired he just kept on going. He was pushing to get to Miami.

Mr. Kiel: If Your Honor please, I object that that is inconceivable that a mechanic would be knowing where a driver was going and whether a light went on or not.

Mr. Reilly: THis is her conclusions.

The Witness: This is what he told me.

Mr. Kiel: The witness just indicated that it was the mechanic's conclusion and I submit that is is not only hearsay, but it is rank hearsay, Mr. Examiner. These remarks should be stricken from the record. They are improper and prejudicial.

Mr. REilly: Let's find out how it came to her attention. Go ahead, Miss Witness.

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The Witness: His conclusion was because of the condition of the motor. There were four busted pistons he told me and possibly a cracked block.

Mr. Kiel: Mr. Examiner, I now move to strike all of the testimony --

Mr. Reilly: As to whether he was pushing to Miami? It really doesn't make any diffeence. WE will strike it.

The Witness: That in order for the engine to be in that condition they had to be driving at sometime with the motor hot. And, he could repair it, but he could not guarantee it and he said that I would extremely advise that you have a new motor put into the car.

Q (By Mr. Browning) What did you do eventually?

A I felt that I needed the car and I didn't want to take a chance on the repair that -- and have it break down again so I authorized a new motor to be put into the car. In the meantime there were numerous telephone calls backand forth to New York and my sister --

Q Is that to AAA Con? Or, to your sister?

A No, to my sister. She was in direct contact with AAA ' Con and she spoke to a Mr. Maxwell, who was the claims adjuster and Mr. Maxwell advised her that -- to advise me to have the car repaired and to subrogate with my insurance company -- have my insurance company subrogate to them andnot to worry about it. One way or the other it would be taken care of.

Q Now, All right.

You had the engine replaced and did you contact your insurance company?

A Not at this point because Iwasn't aware of how much damage had been done. I couldn't report anything at that point.

Q What was the cost of the replacement?

A $375 for the motor plus towing charges.

Q Do you recall what those were?

A I believe they were $45. --$35 and then there was another one -- there were two towing charges. One to the Texaco Station to get the car off the highway and then from the station to Barney's. So, that was $35 and $45. And $375 to install the new engine.

Q Now, after you installed the new engine did you pick up the car yourself or have somebody pick it up for you?

A No. I had to go to West Palm Beach myself and pick up the car. Fortunately, my son had a car and he was able to drive me up there. I had to take all cash because they would not honor a check. They didn't know me.

When I got there I was appalled when I saw the condition of the car. All the hub caps were missing. There were baby clotes, dirty diapers, rancid milk bottles, candy wrappers in the back of the car. They had been given a spotless car.

The front was filthy, the back was filthy. There were

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blankets and pillows -- the things which I had packed into the back -- the trunk of my car and was told not to be worried about were missing.

I was just heartsick. And, I took everything that was in the car out and I gave it to this man Barney. I said, just get rid of it, I don't want it.

Q You mean the car or the things?

A The things. The car was smelling from this stuff.

And, I drove the car back and then the next day I did go to my insurance company and reported the whole incident. I was reimbursed subsequently for the hub caps, but I was not covered for the damage to themotor.

Q Thatwas your insurance -- that was what he advised you?

A Yes.

And, I spoke to Mr. Meeker again and I said, "Would you verify as to the -- he had seen the condition of the car and I said, "Would you verify as to the condition of the car?" And he said, "Yes, of course." And he wrote a letter to the New York office and to Mr. Maxwell.

This is a copy of the letter which he was kind enough to send to me.

Q Would you read it, please?

A This is dated February 17, 1970. "Mr. Maxwell, concerning a 1966 Mustang owner, Mrs. Emily Raze, Miami, which was abandoned on Florida Turnpike.

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I told Mrs. Raze that I would tell of the condition in which I found the car. The hub caps were missing, and the inside very dirty. Contents of interior were blankets, pillows, baby diapers, baby bottles and baby clothes.

None of the above belonged to Mrs. Raze. The car has been repaired and picked up by Mrs. Raze in West Palm Beach. Sincerely --"

Q Now, what items were in the trunk that you put in the trunk before the car left?

A Well, I have --

Q Do you have a list of them?

A Yes, I do.

There was one decorator chandelier. There was an original etching, which was framed in a glass frame. There were two bathing suits, as I recall in a shopping bag and beach hats and robes and lotions sort of stuffed in them. And, there were three dresses, five pairs of sport shoes.

There was a water pitcher, with a tray -- plastic. An attache case which was empty and a small portable radio.

Q All right, Mrs. Raze, did you make any claim to AAA Con Auto Transport?

A I certainly did.

Q When was that, ma'am?

A February 19th, 1971.

Q Was that in writing?

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A Yes.

Mr. Browning: Mr. Examiner, I would like to have marked for identification, if you will, please, a three-page document to which the witness has just referred, a letter to AAA Con dated February 19th, 1970, of Mrs. Emily Raze.

Mr. Reilly: It is marked for identification as Exhibit 126.

(Bureau's Exhibit No. 126,
witness Raze, was marked
for identification.)

Q (By Mr. Browning) Mrs. Raze, I hand you what has been marked for identification as Exhibit 126 --

Mr. Zola: May I have a copy of that, please, sir? So that I may follow this conversation.

The Witness: That is correct.

Q (By Mr. Browning) Is that a true copy of your letter to AAA Con?

A Yes.

Q All right.

Did you get any response from that letter from AAA Con?

A To be very honest with you I don't know. Because, afterwards I turned the whole file over to an attorney, Judge Norman Share.

Q When did you do that approximately?

A Alpril 16, 1970.

Q Why did you turn it over to him?

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A I was getting -- I dont remember because, as I said, my son was handling a great deal of it, but obviously we were getting no response from AAA Con and Mr. Maxwell.

Q Mr. Kiel: Just a minute. I object. She said first that she doesn't remember whether she got a response and she turned it over to her attorney, that her son was handling the matter and now she says obviously we didn't get any responses. And, I submit that that is improper and it is uncalled for under the circumstances.

If the witness knows that is one thing, but if she doesn't know --

Mr. Reilly: Well, if the witness knows despite the fact there may be, as your pointed out, some discrepancies in some areas -- she may answer.

Q (By Mr. Browning) Go ahead.

A The reason I cannot answer is I do not have a document in front of me that states that I actually heard from AAA Con. It would have to be -- if I may say so, in my estimation a negative response in order for me to employ an attorney.

Q In any event did you get any offer to settle your claim?

A Nothing.

Q Do you know what happened to your claim after you turned the matter over to an attorney? Have you received any money, ma'am?

A No.

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Q All right.

What condition was the car in when it left New York?

A Outside of two dents, minor dents it was perfect. The mileage was 26,500. It had had a major tuneup. It had four new tires, two snow tires, brand new. There were two new tires, regular tires in the front. There were two new tires in the trunk of the car which were still in the trunk of the car.

The brakes had been checked, everything. It was in perfect condition. The car had been kept in perfect condition. When my husband was alive he didn't believe in waiting 4 thousand or 2 thousand miles to check it. He believed in taking the car in every month and having it checked and thoroughly gone over.

And, he was most adament about it, so that that car was in -- it was like practically brand new.

Q Mr.s Raze, when did your husband pass away?

A June of -- June 27th, I believe, of '69.

Q Now, when you turned the matter over to your attorney did he advise you at any time of what the position of AAA Con was?

A I don't understand the question.

Q Did Judge Share at any time indicate to you by telephone or by communication of any other sort what the position of AAA Con was in connection with your claim?

A   Position, you mean as far as their being liable?

Q   Yes.

A   He told me that they -- he felt I had a good case or otherwise he wouldn't have taken it.

Q   But did he tell you -- ever tell you what reply he got from AAA Con?

A   He didn't call me for every letter, every little back and forth letter, no. I wasn't informed every time he wrote a letter or every time he got a response. He would just call and let me know something important. He did call me at one point and let me know that he had heard from Mr. Maxwell and they had disclaimed any responsibility whatsoever as to my losses.

Mr. Browning: Mr. Examiner, I would like to have this single-paged document marked for identification, dated May 22, 1970 from AAA Con to Judge Norman Share.

Mr. Reilly: It is marked for identification as Exhibit No. 127.

(Bureau's Exhibit No. 127, witness Raze, was marked for identification.)

Q   (By Mr. Browning) Mrs. Raze, I hand you what has been marked for identification as Exhibit 127 and ask you whether or not that Judge Share communicated the contents of that letter to you?

A   He read this to me on the phone. I never actually saw

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the letter.

Q Do you recall whether or not you signed a freight bill in connection with that movement, an order form freight bill?

A That's my handwriting.

Q All right.

Mr. Browning: Mr. Examiner, I would like to have marked for identification a single-paged document, namely, the freight bill order form of AAA Con.

Mr. Reilly: Marked for identification as Exhibit 128.

(Bureau's Exhibit No. 128,
witness Raze, was marked for
identification.)

Q (By Mr. Browning) Now, Mrs. Raze, I hand you what has been marked for identification as Exhibit No. 128 and ask you to say whether or not this is the document that you signed in connection with the move or a copy of it?

A Yes, it is.

Q Okay.

Mr. Browning: That is all I have of the witness at this time. I tender her for cross-examination.

Mr. Kiel: May I begin, Mr. Examiner?

Mr. Reilly: Yes.

I am waiting for you.

CROSS-EXAMINATION

Q (By Mr. Kiel) Mrs. Raze, with respect to the contents in the trunk, I believe that you indicated that there were two

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tires in the trunk when the car was tendered?

A Yes.

Q And that there was a chandalier?

A Yes.

Q Would you tell us, was that a glass chandalier?

A It is a very difficult thing to try to explain.

Q Could you give me the outside dimetions fo the candalier?

A It was two crossbars.

Q About how long?

A Well, one was so big (indicating) and brass.

Q Would that be about three feet by about a foot and a half?

A One was smaller. And from these hung very heavy glass prisms which were the lights. They were amber in color. I have the original bill for it here.

Q How high were these prisms or globes that you described?

A (Indicating).

Q About eight inches tall?

A About like this.

Q Seven inchess?

A And then the whole chandalier was packed in a box.

Q It was loose?

A It was packed in -- the globes were packed in like newspaper and then packed in a carton. I believe that is the way it was done. I wouldn't have put those in loose. They were

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wrapped in newspaper and then packed in a carton.

Q And do you remember how big the carton was?

A No. It would be --

Q Two feet by about --

A Yes, like that (Indicating).

Q One foot?

A I don't remember. I wasn't well at the time and I can't recall the specific details.

Q Did you put it in the trunk or did somebody else?

A I didn't put it in, no.

Q And was the chandalier part of the device, the brass part, was that packed in the carton?

A No. I believe that was loose.

Q Now, this was a used chandalier?

A Used?

Q Yes. You had used it before you had shipped it?

A Oh, I see what you mean.

Yes, it had hung in our apartment in Fort Lee for about six weeks.

Q Do you remember when you purchased it?

A I will give you the exact date.

Q Do you have it?

A Yes.

January 22nd, 1969 it was ordered, but I believe it was not delivered until some time in April, March or April.

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Q So that you had it since March or April of 1969 and you shipped it here in January of 1970?

A Yes. It had been packed up after my husbnad passed away I had moved from the -- I lived in Fort Lee in the Horizon House and I moved from there to another apartment and I never used it again. I had kept it packed up.

Q Did you ship household goods to Florida when you changed your residence?

A Yes, I did.

Q And was there some reason why the chandalier was not moved with your household goods?

A Yes, there was.

Q Would you tell us what that was?

A The chandalier had been taken down by a friend of mine and stored in her home. Her husband had taken it down and I was leaving for -- at the time when my husband passed away I had gotten out of the hospital. I had had a heart attack and five days after I was out of the hospital he died of a heart attack. I was in no condition to do anything for myself whatsoever.

Therefore, I had very good friends who came in and helped me and my things were all packed up and put into storage. And certain items such as these were taken down by my friend's husband and put in storage in her home, rather than pay the extra expense of having an electrician come in and having

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breakables stored by the moving company.

Then, I subsequently came down here for a month to try to recover.

Q With respect to the portrait how big was that portrait that you have described as being framed?

A The portrait was an etching of my brother which I had done myself and it was framed and under glass. And, it was approximately.(indicating) It was about this big and about this wide.

Q Two and a half feet by about one foot?

A About 14, 16 inches.

Q But you don't remember the size of the paper thatyou drew that on?

A Yes.

Q And was the frame --

A The frame was very cheap, however,

Q However, would you tell us then, did you have the portrait appraised to arrive at the $250 value?

A Somebody had offered me that for the portrait.

Q Well, --

A I had been offered that kind of money to do portraits for other people. And, somebody offered to buy that portrait for that money.

Q Well, do you now draw etchings and sell them to people?

A No.

Q Had you ever before then done etchings and sold them as a business?

A No.

I was never a professional. I had etched, yes, and I had done portrait work, but I never did it for -- professionally.

Q You didn't give them to -- or, you didn't sell them?

A Yes.

Q In any event, ma'am, have you ever looked into the trunk of a mustang automobile when there was only one tire in the trunk?

A Yes.

Q Would you agree with me that there is a rather small amount of space so that you couldn't fit a suitcase -- which is commonly known as a two-suiter in that trunk of a Mustang?

A I disagree, sir.

Q Now, if you put two tires in what amount of space would be available in the truk of a mustang?

A Stuffing space.

Q Stuffing space?

And it is your statement that someone, not you, but a friend of yours put these items that you have listed on Exhibit 126, which is a letter into the trunk?

A Yes.

Q Do you know when these were put into the trunk?

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A The chandalier was put in the trunk by my friend's husband because I had the car tuned up -- I had it done in Hackensack when I got well enough to go back there and arrange for all of my things to be packed up to be moved down here -- on my way out I stopped off -- she lived in Danfly, New Jersey and he rearranged -- did something, don't ask me, I was inside having coffee with her, but he got the chandalier in there and the ice and snow was like 5 thousand feet high.

It was like unreal, the cold and everything else. He was very nice, but he arranged it so that he manipulated whatever was in the trunk and the got everything in for me. And, I just sort of stuffed things in between the -- the air spaces.

Q And when was this time, do you remember?

Mr. Browning: Excuse me, Mr. Examiner. Can I ask Counsel to rephrase that,I am not sure of what he means by this.

Q (By Mr. Kiel) You just described things that you put in the trunk and I am asking you when it was done.

A When the variuos articles were put into the trunk?

Q Yes.

A Well, I started with the chandalier.

Q That was put in in Danfly?

A Right.

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Q I want to know when.

A When it was put in?

Q Yes.

A Sometime in the week of -- the week that the car was picked up and I believe that must have been -- the car was picked up the 27th and I flew on the 30th -- it was the Wednesday or Thursday, probably a Monday of that week. Somewhere in the 20's in January of '70.

Q Was the portrait put in at that time in Danfly?

A No.

Q That was put in later?

A Yes, because that was at my sister's house.

Q And the other material was a radio and all the other items that you have listed on Exhibit 126 wereput in there?

A Yes. They were.

Q They were put in by yours sister?

A Both of us. I had some things over at her place too, and I kept out some things because you see, I had been told the car would be in Florida the 30th and all of my clotes, everything that would be apparel for Florida was in the wardrobe in the moving company.

Therefore, I kept out a few things that I felt that the car would be there in case the moving company didn't make it on the datethat they stated, which is not uncommon, either.

So, I tried to think ahead, thinking the car would be ahead and I would have a few things that I would need.

Q How were the dresses packed in? What type of a case or carton?

A They weren't in a case, nor in a carton. They were in a shopping bag.

Q The clothing items and all fo the items in Exhibit 126 were used?

A What?

Q They wemn't items that were your personal possesions and you had used them beforeyou shipped them?

A Yes.

Q Now, as I understand what you have indicated to us that when you surrendered your car to be transported you paid the driver $79 or had you sent that money in advance?

A They wouldn't pick up the car until they had received the check and the check had cleared for payment.

Q In any event, you paid the driver $79 by check?

A I certainly did.

Q And the price of the transportation was $129 as shown on Exhibit 128?

A That's correct.

Q Did you pay $128?

A No, I didn't.

Q You paid $79?

A Yes, I did.

Q So, that you retained the $50 balance which would have made the total of the transport of $129?

A I retained it?

Q Yes. You didn't pay it to the carrier, you retained it?

A I never even saw him.

Q You didn't pay AAA Con $129?

A No, I did not pay.

Q As it was agreed upon initially?

A As agreed upon initially?

Q Yes.

A I agreed to pay AAA Con $79 prior to picking up the car and I agreed to pay the driver $50 upon delivery of the car. That was the agreement. The car was never delivered to me.

Q As far as Exhibit 128 is concerned --

Mr. Reilly: Oh, Mr. Kiel, would you please get away -- the car was never delivered. Obviously she never paid the $49. You are not going to prove anything.

Q (By Mr. Kiel) Have you since submitting Exhibit 127, wrote the letter to Judge Sheer?

A Judge Share?

Q Share?

A Yes, I wrote that-letter.

Q And were you aware of the fact that the carrier's liability with respect to personal effects is limited to $50?

Mr. Browning: I object to that. I think that may be an

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improper question.

Mr. Kiel: Let me finish my question.

Mr. Reilly: Finish your question.

Q (By Mr. Kiel) As you indicated that -- to the carrier before shipment that that has a greater value that you wish to -- and you wish to pay an additional charge for insurance?

Mr. Browning: I object to the question on the grounds that I don't believe that it is a proper statement.

Mr. Reilly: Where does that appear, Mr.Kiel?

Mr. Kiel: I refer to the letter which is Exhibit 127 where it says, "said contract and tariff provisions provide that upon the failure of the shipper to list and value the contents of her trunk on the bill of lading and to pay additional insurance charges to cover said contents, the liability of the carrier is limited to $50."

Mr. Reilly: Now, wait a minute. Now wait a minute.

Mr. Kiel: We were discussing the letter, if you would, Exhibit 125 which is the bill of lading,provides, "unless a greater value is declaired thereon the shipper agrees that the declared value of all personal property in the vehicle is under $50 and hereby releases carrier from all obligations.

Mr. Browning: Mr. Examiner --

Mr. Kiel: Now, wait a minute. I am trying to read it and some of it is cut off. I believe that this reads, "for loss and for damage thereto in excess of $50."

Mr. Reilly: What are you reading from?

Mr. Kiel: Exhibit 125.

Mr. Reilly: You said from 127.

Mr. Kiel; I started from 127. I read the part from 127 and -- please, Mr. Browning, just give me the courtesy of finishing.

Mr. Browning: I thought you were, excuse me.

Mr. Kiel: That's all right.

Mr. Examiner, the Interstate Commerce Commission has issued a rehease rights order, No. MC-803 on April 15th, 1971 which was a revision of an earlier order which was in effect at the time of the shipment, pursuant to the order.

Mr. Reilly: All right. Let's stop it.

Mr. Keil: Let me get the date, Mr. Examiner.

Mr. Reilly: I am not interested in that. When I am interested in it I can look it up. I know where it is to be found.

Now, will you restate your question and ask the witness the question.

Mr. Kiel: Mr. Examiner, if I may just give the old release order number which was in effect at the time.

Mr. Reilly: All right. Go ahead. It is easier this way than to let you go on and on and build this record into --

Mr. Kiel: The release rights order No. MC-690, February 9, 1970 -- 67.

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Q (By Mr. Kiel) Now, ma'am, you were aware that your attorney was advised with respect to the carrier's liability being limited to $50 for personal property in the car which is shown on Exhibit 127; isn't that correct?

A Yes, that is correct.

Q All right.

Now, isn't it a fact that you had retained the $50 of the $129 transport charges?

Mr. Browning: I object to the form of the question.

Mr. Reilly: I don't like it either.

She didn't retain it. She didn't pay it. The car was never delivered to her. She didn't pay it. She had no opportunity to pay the driver.

Q (By Mr. Kiel) Isn't it a fact, ma'am, that the $50 which you didn't have an opportunity of paying is an offset against the $50 liability the carrier for any possessions which might have been missing from the trunk of your car?

A No, that is not a fact.

Q Now, as I understand your testimony, Mr. Meeker of the West Palm Beach arranged to have the car taken to the Texaco station after the breakdown; is that correct?

A Wait. I am trying to recall whether it was Mr. Meeker or the State Police who arranged to have it towed. I don't recall which one. Mr. Meeker was handling it. Mr. Meeker -- I believe the State police got it to the station and Mr. Meeker located

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it there, I believe.

Q Now, didn't you tell Mr. Browning when he asked you the question that you spoke to Mr. Meeker and he on his Sunday or Sunday, or something like that, a holiday, went down and arranged to have the car picked up and you were very appreciative of his assistance in the matter?

A Yes, I was.

Q Now, is it your statement that what you told us before was not correct, that you didn't speak to Mr. Meeker and he didn't do the things that you said he had previously?

A Restate that, please. I don't understand the question.

Q Is it your statement now that the discussion with Mr. Meeker and the services that he provided to assist you were not performed and you didn't speak with him?

A I never said that.

Q Isn't it a fact, ma'am, that your insurance company indicated that the reason that they would not pay your claim was that your engine problem was caused by a mechanical breakdown resulting from a broken water pump?

A T hat was what they said, yes. Also the fact that it was driven by an agency. I wasn't covered for the fact that it was being transported by an agency.

Q Do you have that in writing? That is the reason why they declined your claim because somebody else was driving it?

A No. It was involved with being driven because I had hired a professional agency and they were supposed to be covered by insurance by the agency.

Q Is that in writing to you?

A No. I don't have that in writing unless it was something that was either told to me by the insurance company or the attorney.

Q You did receive a letter from your insurance company dated March the 3rd advising you that they inspected your engine in West Palm Beach and they damages were as a result of mechanical breakdown and excluded under your policy; do you remember that?

A Yes.

Q I show you copies of -- a copy from our file and ask you is that what the letter says?

A Yes.

Q And it is a letter to you from All State Insurance Company signed by Lola Haft, claim examiner, claim number G-41B81475?

A I am supposed to remember that number?

Q That is in fact the reason why your claim for damages to your automobile was denied by AAA Con for the same reason, that they are not responsible for mechanical defects which occur in your automobile while it is being transported?

A Are they responsible for the car?

Q Now, please, will you answer my question?

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A I won't answer that question.

Mr. Browning: Mr. Examiner, I submit --

Mr. Reilly: I don't know where you got this information,

Mr. Kiel: I didn't see anything in the record that AAA Con made any affirmative written explanation. I don't know even whether they denied it except for some evidence transmitted to her by an attorney.

Mr. Kiel: Mr. Examiner, I haven't had an opportunity to put in evidence, but I can assure you that evidence will be put in.

Mr. Reilly: I don't want assurances. If you have a piece of paper that you can hand to this witness I will permit the question. But, there is nothing in the record to form a foundation for the question you asked that witness.

Q (By Mr. Kiel) Mrs. Raze, I refer to the Exhibit 127 --

Mr. Browning: Exhibit 127.

Q (By Mr. Kiel) Exhibit 127, the second paragraph, you indicated that your attorney had advised you that as to the contents of the letter to him from AAA Con dated May 22, 1970?

A Yes.

Mr. REilly: She never said -- she never saw this letter.

Q (By Mr. Kiel) You never saw this letter?

A He read it to me over the phone.

Q He read it to you?

A Right.

Q And isn't it a fact that your attorney told you that AAA Con disclaimed responsibility because the damage to your engine resulted from a mechanical difficulty incurred in shipment and that the consequences thereof are the sole responsibility of the car owner and -- I am reading that from Exhibit 127?

A That's what AAA Con said, yes.

Q And that AAA Con siad, and your attorney told you therefore that they decline, respectfully declined your claim?

Mr. Browning: Mr. Examiner, I think the wintess stipulated that the 127 says what it says.

Mr. Reilly: I think it speaks for itself. The witness has never seen it.

Mr. Kiel: Mr. Examiner, you said on the record that you wanted some indication of a written --

Mr. Reilly: fou gave the -- the witness answered the question.

Q (By Mr. Kiel) Now, getting back to my question; isn't it a fact then that AAA Con denied your claim for damages to your engine for the same reason that your insurance company did, namely --

Mr. REilly: Now, she doesn't know that as a fact. She knows that only because of a telephone conversation from her attorney transmitting such information to her. She doesn't know it as a fact.

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Mr. Kiel: Mr. Examiner, I --

Mr. Reilly: Lay the foundation, "you were advised by your attorney --"if you want to get itin that way, fine.

Q (By Mr. Kiel) In your conversation with your attorney you indicated that you had been advised of the contents of the letter which is Exhibit 127, do you remember that?

A fEs, I do.

Q And in that letter among the contents was a denial of your claim because of mechanical difficulties?

A That's what the letter says.

Q And the letter that you received with respect to the denial of yourclaim from ALL State Insurance Company was the same reason?

Mr. Browning: I object.

Mr. Reilly: This is in the record. It is all in there. This is just repetition, Mr. Kiel.

Q (By Mr. Kiel) When you received the denial of your claim from AllState Insurance due to mechanical difficulty did you go into the matter further with them to determine the basis of that denial?

Mr. Reilly: Are you able to answer that question? Do you know what he is talking about?

The Witness: I know what he is talking about but I don't know if I can intelligently answer it.

Mr. REilly: If you can't intelligently answer it,don't

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answer it.

The Witness: I don't think I can because it is involved legally and I can't really relate it.

Q (By Mr. Kiel) All right.

You got a letter from your insurance company that we referred to earlier, did you receive that March 3rd, 1970 when they denied your claim for damages on your car becuase it resulted from mechanical breakdown and was excluded under your policy?

A You showed me that letter, yes.

Q Now, did you contact the insurance company after you got the letter of March 3rd to find out whether there was anything that they had done in error in denying your claim?

Mr. Browning: May I see that letter, please?

Mr. Kiel: Sure.

Mr. Browning: Do you want to read that thing into the record or what?

Mr. Reilly: I don't know what you are trying to get at you mean did she see the insurance company?

Mr. Kiel: Did she ever call them or write them later to find out the basis for the denial?

Mr. Reilly: Did you call them subsequent to the receipt of the letter?

The Witness: I really don't know -- I don't remember whether I did or didn't.

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Mr. Reilly: All right.

The Witness: There were so many people involved in this I really don't know who did what actually at that time.

Q (By Mr. Kiel) Do you have insurance called the personal property floater?

A No, I do not?

Q Or homeowners or household --

A At that time, no, I didn't.

Q You filed no claim with anyone else for the personal property which you indicate was missing from your automobile?

A No.

Mr. Kiel: I have nothing more.

Thank you.

Mr. Browning: I have a couple of questions.

REDIRECT EXAMINATION

Q (By Mr. Browning) Mrs. Raze, Did Barney -- he was the mechanic, wasn't he?

A Yes, he was.

Q Did he tell you that all that you needed was a water pump?

A On the car?

Q Yes.

A It needed a whole new engine.

Q Yes.

Why, did he tell you why?

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A Yes.

Mr. Kiel: Objection.

Q What was that?

Mr. Kiel: Objection.

Mr. Reilly: What is the basis?

Mr. Kiel: There was no discussion with respect to anything between Barney's conversation -- between this witness and Barney's on cross-examination.

Mr. Reilly: Your objection is sustained.

It is in the record anyway.

Mr. Browning: They were talking about water pumps.

Mr. Reilly: I am trying to shorten the record a bit.

Q (By Mr. Browning) Do you recall what kind of insurance you had on the car at the time?

A All State.

Q Do you know what kind of a coverage you had?

A I didn't bring the policy.

Q But, did you have liability -- do you know what I am talking about when I say liability?

A Yes.

Q Did you?

A I had liability, property damage, bodily injury -- what is Comp?

Mr. Reilly: Comprehensive.

Q (By Mr. Browning) Did you have any collision insurance

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on your car?

A Yes.

Q Did you keepthe trunk of your car locked at all times after you put the itmes which you listed in the Exhibit 126 into the trunk?

A When you close the trunk it automatically locks.

Q All right.

So, it locked, right?

A Yes.

Q I see. And do you know whether or not those items were in the car when you tendered the car to AAA Con's man?

A Absolutely, because I opened the trunk of the car and showed him and I said, do you want a list of these things and he said, no. And, I know that they were in there.

Q Did he tell you at that time they would be covered by insurance, those items?

A No. He didn't use those words exactly. He said, "Don't worry about it. You have nothing to worry about. The car will arrive safely and all your things will be all right."

Mr. Browning: That is all I have.

Thank you very much.

RECROSS-EXAMINATION

Q (By Mr. Kiel) As I understand you had no insurance covering mechanical breakdown?

A Obviously, I didn't.

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Q And I understatd your two new tires in the trunk were in there?

A Yes.

Q They were new tires?

A Not brand new, no.

Q They weren't missing?

A No.

Q One more thing. Do you know what the car model was?

A 1966 Mustang.

Mr. Kiel: Thank you.

Mr. Reilly: Mr. Browning?

Mr. Browning: Mr. Examiner, I offer Exhibits Nos. 127 through --

Mr. Reilly: 125 through --

Mr. Browning: 125 through 128.

Mr. REilly: Any objection to the exhibits?

Mr. Kiel: No objection.

Mr. Reilly: They are received.

(Bureau's Exhibits Nos. 125 through 128, Witness Raze, were received in evidence.)

Mr. Reilly: We will take a short recess.

(Whereupon, a short recess was taken.)

Mr. Reilly: Mr. Browning, are you ready?

Mr. Browning: Mr. Examiner, yes, sir.

I call Mrs. Brown.

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JOCELYN BROWN

was sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) Would you please state your name and addresss?

A Jocelyn Brown, 8000 Bay Meadows Circle, East Jacksonville, Florida.

Q Mrs. Brown, what is your occupation?

A Advertising.

Q Do you have a daughter?

A Yes, I do.

Q Where does she live?

A She lives in Alameda, California.

Q Has she lived there all the time?

A Well, she is a Navy wife. She has lived a number of places in the past two years.

Q Has she lived in Kingsville, Texas?

A Yes, she did.

Q That was Texas, not tennessee?

A That was TExas.

Q Have you had, or your daughter, both of you had any experience with AAA Con Auto Transport, INc?

A Yes, my daughter hired AAA Con to transport a car which belonged to her from Kingsville, Texas to me in Jacksonville, Florida. It was early in 1970 and you will have to look at

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the dates. I think it was March or February. I could not tell you exactly, the exact day, it has been almost two years.

Q Was that her car that she --

A That was her car.

Q What was the purpose of that, do you recall?

A Yes.

They were to go to Japan and I said, "Well, I will buy one of your cars and give it to my boy." And, we agreed on a price and she was going to have it transportd from Kingsville to me, in fact, they had been in Kingsville a very short time.

They had been in Jacksonville with the car -- my boy had driven it. They had gone to Kingsville -- I don't know -- anyway, maybe five or six weeks of training -- And rather than drive it on out the coast I said that I would like and they had it driven back to me.

Q Okay.

Was that your car when -- at the time it was transported by AAA Con, or was it hers?

A You know, to tell the truth, I don't even know. I got the title and I sent her the check, it was one of those -- it was one or the other.

Q Would you tell us, please, what were the circumstances surrounging the car shipment?

A Well, she hired AAA Con and -- in Texas. And, I gave you herletters which she had just sent to me which she wrote to

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AAA Con. I had no correspondance whatsoever with them.

She hired them and I remember she complained because they ewre supposed to come in the morning and they came at 3:30 in the morning to pick up the car, which would kind of shake me up, too. And, they drove it to me and they brought it to a parking lot, these two young, well, you know --Hippies types, like all boys are now, to a downtown parking lot in Jacksonville.

It was about a half a block from my office. I got a call from that parking lot that they were blocking there and they didn't want to pay parking fees, and for me to get there quickly. And they handed me this thing, "sign it, the car is here." And they took offf.

Q What did they hand you to -- do you recall?

A They handed me something to sign that I had received the car, which I did. Then, I left the car parked there and I think at noon or something I drove it -- because the parking lot attendant said, "Well, there is not a drop of gas in this car." Well, I got in the car and drove about two blocks to the nearest gas station and I felt like, a hot-rodder, because it was going boom, pow, you know, smoke -- smoking and skipping and I thought, "Oh, Lord."

And, I took it into the gas station and they siad it was bone dry with gas and they had to put two quarts of oil in it before it even measured. The oil -- I mean, it was devoid of oil.

I drove it to a Ford dealer then and now, don't start with me about saying the wrong thing. I am just telling you what the man, the mechaic said. If I start saying something I shouldn't, stop me.

He said that it looked like it had been gunned at high rates of speed and flying oil. But, he recommended, Lynch Davidson, the Foord dealer, from what they could see from going over the engine -- I left it there that afternoon -- that it needed the engine replaced.

And, I didn't wasnt to pay that amount of money. What I finally did was have a friend of mine who is in the used car business get a used engine fro about $150 and $125 and somebody put it in for $50.

Anyway, I had to replace the engine in the car. Their feeling was that it had been abused by driving it.

Now, I cannot attest to the condition when it left Texas. I know my son-in-law is an idiot about the way he treats a car and it had been tuned and all this stuff. It had been fixed before it left, but don't ask me to tell you anything mechanical because I won't give you a decent answer.

Q You say your son-in-law is an idiot when it comes to a car; what do you mean bythat?

A Oh, he has it serviced and he is doing this and that and the other and he is always fussing with me because I don't take

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proper care of a car. That's why I assume -- I cannot tell you because I wasn't in Kingsville, but the -- I know the way he takes care of a car.

I called my daughter and I told her the condition it had arrived in. I did not tell her the engine had to be replaced because she -- I knew they couldn't afford it. Se said, "WEll, mother, if you have to spend any money, take that off of what you are going to pay me for the car."

You know mothers are in indulgent. They don't want to goose their daughters and I didn't. I knew the kids couldn't afford to -- $300 would kill them so I thought,"well, fooey, no. Write those people, Linda,"because they had told the young man who drove the car when the left, "Now, there are two quarts of oil in the back of the car. Check it and put oil in it so that you don't run hot."

There were two quarts of oil in the very large trunk of the Mustang.

When it arrived in Jacksonville they were intact, those two quarts of oil. They were in beautiful shape, those two quarts of oil, intact, in the trunk.

So, I called my daughter and I did tell her that both the man who got me --fixed it for me on the deal -- and the man at Lynch Davidson, the Fod Dealer, downtown Jacksonville, said that the car had been driven at a high rate of speed throwing oil and it was devoid of oil when it got there and

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there was engine damage.

As I said, it sounded, pop, skip and it was smoking and it just -- well, he said it needed a new engine.

Q You didn't -- excuse me. Go ahead.

A It needed a new engine. I did not tell my daughter it needed a new engine. I said they had done some damage.

She wrote to AAA Con and told AAA Con -- you have a copy of the letter which described everything but the fact that I had to replace the engine and asked them what they would do about the damage to the car and the fact the people had come at 3:30 in the morning, the way the entire thing had been handled.

They wrote back a letter which she reads to me on the phone stating, since I had signed a release in the parking lot downtown they were -- their point of responsibility had ended. I had accepted the car and that I should have had it checked, taken it to an automobile dealer and had it checked before I accepted it. Which, sounded a little wild to me, but this was what he indicated and they sent a gift certificate for $10 "to have your next car transported by AAA Con."

Well, my daughter got so livid at this she mailed the letter back. I went to my attorney and I said, "Listen, I haven't spent but about $200. What do you suggest?" And I told him what these people had said.

He said, "It's going to cost you more than $200 to fight it and you can tell the kind of people you are dealing with." He said, "I would advise you to forget it." Which I did forget it. And, that was it.

Q Okay.

Was your daughter recently contacted or were you or your daughter recently contacted by AAA Con?

A Yes.

Q What was the --

A They wanted to know if we still had some interest in them -- or you know, if our claim had been settled. And, I presume that it was becuase you people were investigating that caused them to sudddenly reawaken after two years.

Mr. Browning: First, Mr. Examiner, let me have marked for identification a single-paged document being a letter of AAA Con and a response by Mrs. Brown on the same document.

The Witness: That is the only response I ever had. It was the only time I ever heard from them.

Mr. REilly: Marked for identification as Exhibit 129.

(Bureau's exhibit No. 129,
witness Brown, was marked
for identification.)

Q (By Mr. Browning) Mrs. Brown, I hadn you what has been marked for identification by -- as Exhibit No. 129 and ask you to state whether or not that is a true and correct copy of the document that you received from AAA Con and your response thereto?

A That's right.

Mr. Browning: Mr. Examiner, may I have marked for identification a two-page document being a letter of Mrs. Charles Parker, Jr. to the Claims Division of AAA Con dated March 10, 1970, please.

Mr. Reilly: It is marked for identification as Exhibit 130.

(Bureau's Exhibit No. 130,
witness Brown, was marked
for identification.)

Q (By Mr. Browning) Mrs. Brown, I hand you whathas been marked for identification as Exhibit No. 130 and ask you to say whether or not that is a true and correct copy of a copy photo that you have in your files?

A Files?

Q From your daughter to AAA Con?

A Yes.

Q That you have testified to concerning --

A Yes.

Q Mrs. Brown, have we missed anything?

A No. AS I said, their dealings were all with my daughter she probably would have made a far better witness than I have except I know the condition the car was in.

Mr. Browning; That is all I have of the witness at this time, Mr. Examiner. I tneder her for cross-examination.

Mr. Reilly: Go ahead, Mr. Kiel.

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CROSS-EXAMINATION

Q (By Mr. Kiel) Mrs. Brown, as I understand your testimony you brought this automobile from your daughter, it was a 1966 Mustang?

A That's correct.

Q The same year as the prior lady?

A My predecessor, with the small trunk. My car had a big trunk.

Q A big trunk.

And the price thatyou paid for the car, please?

A I don't know. I would have to go back through my check books -- I honestly don't --

Q Can you give me the approximate amount?

A I don't remember. I do not know. I honestly don't. WhatI did, this friend who has the used car lot, I checked with him about what is the going price for a mustang and in good condition and I gave her a check for that amount. She could tell you. She is far more organized than me.

Q Do you know how many of -- how many gallons of gas you put in the car? When you had it filled after you left the parking lot?

A No. I just filled it.

Q You said that it was sitting on empty and you filled it?

A Yes.

Q You don't know how many gallons?

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A No, I do not.

Q If I understand correctly, two quarts of oil were added?

A No, two quarts of oil were necessary to -- before it registered and I took it to the little ARco station around the corner from my office where I always do business and they are the ones that said, "My God, I had to put two quarts in before it even registered." They put in more than that.

Q How many quarts did they put in?

A I have no idea.

Q Now, did your daughter tell you when -- why she put the two quarts of oil in the trunk of the car when it was shipped?

A Yes, because my son-in-law had bought a lot of oil. I don't know -- on sale somewhere and he had had a couple of quarts in the back of it and he remarked to the boy. Now, why, I don't know.

Q Your son?

A My son-in-law.

Q Your son-in-law used to take care of his own car, put oil in it, take care of his car in that respect?

A Yes.

Q Did you know that the car used oil, that it leaked oil when it was being operated?

A No.

Q Now, on Exhibit 130 in your daughter's letter there is an indication and I will read it, "The car has never used an

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excessive amount of oil."

Now, did she ever tell you that it used oil?

A No.

Q Even though not an excessive amount?

A No.

Q Now, as I understand your statement, you had a friend replace the engine?

A That's correct.

He got a used engine.

Q About when was that?

A The week that the car came in, the end of the week. It was within that week. He found a used Mustang engine and had his mechanic put it in for me and it cost me -- the entire thing cost me somewhere between $175 and $200. But, it was a lot cheaper than going to the Ford Dealer.

Q And I assume that in view -- strike that.

You had arranged for delivery to be made to you at your place of business?

A Yes.

Q And --

A They were to call me when they got in to town.

Q Right.

A Yes.

Q And they did call you from the parking lot in your office?

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A   Near my office, that's correct.

Q   Your office, I assume, is in downtown, andit is not convenient to leave automobiles in the street?

A   Well, there are meters in the street. There are parking lots.

Q   And the delivery was made two days after it was picked up?

A   That's correct.

Q   It was picked up a little bit too early in the morning than was convenient?

A   I assume 2:30 in the morning would be kind of messy for you to have a pickup made.

Q   I'm sorry. It was three days, 7th, 8th and 9th.

Did you have anyinformation from your daughter as to the mileage of the car when it started out, the mileage on the car?

A   I do not know.

Q   And I assume you didn'tcheck it when you got the car?

A   No. I honestly don't remember that.

Q   And I assume you didn't discuss that with -- that matter with your daughter?

A   I can't say if I did or not. I don't remember it has been two years.

Q   Now, as I understand it you didn't -- in ordernot to upset your daughter you didn't tell her about the problem that

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you had had with the engine? And when she wrote the letter which is Exhibit 130 --

A She knew that there had been damage and she indicated this, that there had been damage and I said let's see what they say and then I contacted my attorney after your answer and he said I would advise you to forget it, which I did.

Q Now, Mrs. Brown, I understand that you never notified the carrier that you had to replace the engine?

A No.

Q And that infact the only person who corresponded with the applicant --

A Was my daughter.

Q Was your daughter and the carrier wrote to you and -- in November and in January, 1972 -- or in November 1971 and in January of 1972 as shown on Exhibit 129 and you responded at the bottom of the letter?

A That's correct.

But, you did have the letter from my daughter stating that there had been damage and your office was -- I had singed the release without having the car checked and I had released it and that you were not responsible for anything which had been done to the car.

Q Do you have the letter from the carrierdeclining your claim?

A No. That my daughter sent back, that letter, she got so mad she sent it back to you and it was to Mr. Michael -- what was his name -- you have his name over there.

She got so mad she mailed it back and when I told her that I had to come down here -- I didn't even know that she had mailed it back to them. She said she was furious and she mailed the letter back.

Q I assume that you did not speak with the driver and ask him at what speed the vehicle had been operated?

A Why would I ask the driver of a parked car what speed theautomobile had been driven at? I had never turned the igintion key. I hadn't attempted to drive it.

Q Now, did you give the driver a tip in addition to paying him the balance of the money?

A No. I wrote a check for -- it was $50 I was supposed to give him. I would have to go back into my checks. I had to write a check from so much when it arrived and gave him the check.

Q You don't recall?

A No, I don't recall, really. It seems it was a check I had to write when the car arrived. This has been two years. Good heavens!

Mr. Kiel: I have nothing more of this witness, Thank you.

The Witness: Thank you.

Mr. Brown: I have one question.

REDIRECT EXAMINATION

Q (By Mr. Browning) Mrs. Brown, I have one question concerning the letter that your daughter received -- she sent it aback with a letter of her own?

A She sent it back, this letter, yes.

Q Mrs. Brown, I didn't make a copy of that. I would like to have you read that if you would, into evidence.

Mr. Kiel: I object.

Mr. Reilly: You may read the letter, Mrs. Brown.

The Witness: "Enclosed, please find the letter which was received from your organization. I can assure you that we shall never again have reason to call upon your firm for services in transporting an automobile.

I am, moreover, horrified at the total lack of responsibility which your firm has displayed in this matter. Your company did not comply with the terms of our original agreement and you expect us to abide by the decision in your mimoegraphed form letter.

Surely, an individually typed letter would have been more personal and would have expressed any genuine regret you may have felt. I imagine your professional reputation would be more important to you than the relatively small amount involved in settling a legitimate claim.

However, you are obviously not concerned about this and if you were you would have taken immediate steps to correct

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the situation.

And, now, may I ask a question? Do you suggest that your customers should have their automobiles totally inspected immediately upon arrival while the driver stands by? If so, then I would suggest that you state this on the bill of lading. If your drivers are not sufficiently trustworthy then perhaps you need a new means of securing them other than by newspaper advertisements.

I am only thankful that we learned of theway your company operates. Fortunately we were spared any major expense necessary to rqair the car. WE had planned on having another car sent from California in August, but I am sure that this trasnport will be done through some othr firm otherthan your own.

I would also appreciate your at least bothering to have my name correct in your files. The name is Charles Parker, not Christopher. This is simply an indication of your carelessness and total lack of concerne for the customer."

She's more articulate than her mother.

Q What is the dateof that letter?

A The date of that letter was April 10th, 1970.

Q Now, look at Exhibit 130 if you will, please, that is the original letter of your daughter and did she indicate in that letter that there may have been other damage?

A Yes. She indicated damage in the first letter, but you

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see, I never told her aboutit because I knew she would pay me and these people were not going to.

Q And your response to the letter of January 5th, 1972 you indicated that you -- which is Exhibit 129, that the engine was replaced; is that right?

A That's correct.

Q And have you had any response to that letter?

A Yes.

Mr. Zola, I believe it was the younger Mr. Zola called me and said that this was the first thing about the engine being replaced. And I said, "That's correct, because I haven't been in correspondance with you, my daughter had."

Q And when was that? When did that occur?

A About a week or two before the hearing. I guess it was because he knew I was coming down here to say something.

Q Well, did he indicate that he was going to settle the claims?

A No.

Q Did you -- did he offer you any settlement?

A No.

The Witness: Are you through with me?

Mr. Reilly: I don't know. I am waiting for Mr. Browning. I don't know whether or not he has a nother question.

Q (By Mr. Browning) At that time did you tell him by telephone the amount that you paid for the replacement of the

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engine?

A   YEs. I said approximately $200, about in that area.

Q   Mr. Brown: That is all I have.

Mr. Kiel: I have just one question.

RECROSS-EXAMINATION

Q   (By Mr. Kiel) In reading that last letter was there an indication that another car was going to be shipped. Do you know whether it was and who transported it?

Mr. Reilly: Now, Mr. Kiel.

Mr. Browning: That is irrelevant.

Mr. Reilly: It doesn't make any difference.

Mr. Kiel: I have nothing further.

Mr. Reilly: The witness may be excused.

The Witness: Thank you.

Mr. Browning: Mrs. Brown, wait just a moment. I would like to have you sign this claim form too to reimburse you for your --

Mr. Examiner, we have no more witnesses here today. I would like at this time to sponsor as Counsel's Exhibit a multi-page document which is the tariff of AAA Con Auto Transport, Inc., and request that the Examiner take judicial notice of the filing of that tariff with the Commission.

I would like to have that marked for identification.

Mr. REilly: It is marked for identification as Exhibit 131.

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(Counsel's Exhibit No. 131, was marked for identification.)

Nr. Browning: I move the admission of Exhibits --

Mr. Reilly: 129, 130.

Is there any objection to 129 or 130?

Mr. Kiel: No objection

Mr. Reilly: 129 and 130 are received.

(Bureau's Exhibits Nos. 129 and 130, witness Brown, were received in evidence.)

Mr. Browning: I move the admission of 131.

Mr. Kiel: Wait a minute.

I haven't even seen the exhibit, Mr. Browning, and you are moving for the admission of it.

Mr. Browning: I am sorry.

These are selected pages, of course, of the tariff. Of course, I didn't want to reproduce the entire tariff. It would be too bulky.

Mr. Kiel: Mr. Examiner, in view of the motion of Counsel to receive Exhibit 131 I object because as Counsel indicated it is selected pages and it does not give a complete --

Mr. Reilly: What difference does that make whether you object or not. It is an officialtarfiff and I can take official notice --

Mr. Kiel: It is not the official tariff. It is only a few pages taken from the tariff. I would prefer that you take

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official notice of the entire document rather than have in this record --

Mr. Reilly: What are you really objecting to. It is marked as an exhibit and it si in the file. I will take official notice of the total tariff, but I am not going to --

I am going to receive Exhibit 131.

That is more nonsense than I have ever heard of in my life.

(Counsel's Exhibit No. 131,
was received in evidence.)

Mr. Browning: Mr. Examiner, we had originally planned on closing this case, or rather our side of the case at this point in resting, but I got a phone call from somebody in the New York area before Ileft lastweek who expressed a desire to testify in the case and I would like to go back and pick up that witness if I could.

Mr. Reilly: Well, you haven't rested so we will keep the record open as far as your side of the case is concerned.

Mr. Kiel: Mr. Examiner, my recollection of the --

Mr. Reilly: Now, Mr. Kiel. Look, for crying out loud, Mr. Kiel. I have listened more than enough to all of these things that you are going to tell me, your extenuation, or your extension of the record beyond all reasonable bounds.

I am going to have no argument. I have ruled that he has not rested his case. Ifhe wants to put on additional

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witnesses in New York and provides you with the proper notification he may do so.

Now, we will get around to fixing a date if we can for the hearing in New York.

Mr. Brown: I only have but one. I don't think I will have any more than one witness there, Mr. Examiner, so it won't take very long. But, I can't guarantee it right now.

Mr. Reilly: Are the parties in the position that they can agree on a date for continuing the hearing in New York?

Mr. Johnson: What did you have in mind, Mr. Browning?

Mr. Browning: You mean for a date?

Mr. Reilly: The only thing that I have is hearings in Washington on February 9th, 10th and 11th. I haven't been at my desk so I am not quite sure.

Mr. Browning: I think I have hearings in February. I don't know when they fall. I don't know offhand the dates. One is the 14th or 13th.

I would say as soon as possible.

Mr. Kiel: Mr. Examiner, my calendar for the week fo the 14th and the 25th of February are open, the first week in February to the 13th of March. The first 13 days in March are not available for me. So, if it would be before either one of the second two weeks in February or the second two weeks in March.

Mr. Browning: What part of February?

Mr. Kiel: Second two weeks. The week of the 14th and the week of the 21st or in March,preferable the week of the 20th or the 27th.

Mr. Browning: I think I could make it the last two weeks of February as far as I know.

And, in March, as far as I know I am open --

Mr. Reilly: How many days do you think you are going to require?

Mr. Kiel: I do't know. I don't know what we are going to have to do with respect to a rebuttal because --

Mr. Reilly: WEll, then let's stop all this and when you find out -- when you know how many witnesses you are going to have and how much time you are going to take then you write a letter to me and I will fix the date.

Mr. Kiel: All right.

Mr. Browning: I will give you notification of that witness as soon as I can compile the information, Mr. Kiel.

Mr. REilly: Would you also write me a note as to how much you are going to require?

Mr. Browning: Yes, sir, I will. I will only need a short while, maybe a morning at the most.

Mr. Reilly: Well, then we will adjourn the hearing to a time and place to be set at a later date in New York.

(Whereupon, at 12:15 o'clock p.m., the hearing adjourned, to reconvene at a later date.)

APPENDIX 760

BEFORE THE INTERSTATE COMMERCE COMMISSION

---x

In the Matter of: :

RE: MC-C-7287 :
AAACON AUTO TRANSPORT, INC.,
Investigation and Revocation of Certificate :

MC-C-7287 (Sub. No. 1) :
AAACON AUTO TRANSPORT, INC.,
Petition of Declaratory Order :

FF-359 :
AUTO TRIP USA, INC.,
Freight Forwarder Application :
New York, New York
:

---x

26 Federal Plaza
New York, New York
March 20, 1972

Met, pursuant to adjournment, at 9:30 o'clock a.m.

BEFORE:

JOSEPH H. REILLY, Hearing Examiner

APPEARANCES:

As heretofore noted.

*****

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Ray Dean Rust (Bell Laboratories)	1207	1242	1262 1269	1267
Stephen P. Tomany (Interstate Commerce Comm.			1275	1290
John E. Trecartin,	1288	1296	1358	

EXHIBITS

NUMBER	FOR IDENTIFICATION	IN EVIDENCE
No. 132 (Witness Rust)	1210	
No. 133 (Witness Rust)	1212	
No. 134 (Witness Rust)	1217	
No. 135 (Witness Rust)	1223	
No. 136 (Witness Rust)	1224	
No. 137 (Witness Rust)	1225	
No. 138 (Witness Rust)	1226	
No. 139 (Witness Rust)	1229	
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No. 144 (Witness Rust)	1236	
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No. 147 (Witness Rust)	1239	
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EXHIBITS (Cont'd.)

NUMBER	FOR IDENTIFICATION	IN EVIDENCE
No. 149 (Witness Rust)	1263	
No. 150 (Witness Rust)	1266	
No. 151 (Witness Rust)	1270	
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PROCEEDINGS

EXAMINER REILLY: The Interstate Commerce Commission has set for hearing at this time and place proceedings in Dockets No. MC-C-7287, MC-7287 (Sub. No. 1), and No. FF-359.

This is a continued hearing in the cited proceedings. I will take the appearances.

For the Bureau of Enforcement?

MR. BROWNING: My name is Philip M. Browning, Jr., Room 1807, 26 Federal Plaza, New York, N. Y. 10007. I am an attorney admitted to practice before the Interstate Commerce Commission. I am appearing here on behalf of the Bureau of Enforcement.

EXAMINER REILLY: I will take the appearances for the Respondent and Applicant.

MR. KIEL: Morton E. Kiel, 140 Cedar Street, New York, N. Y. 10006.

MR. R. ZOLA: Ralph Zola, 1472 Broadway, New York, N. Y. 10036.

EXAMINER REILLY: And the appearance for Protestant?

MR. JOHNSON: Daniel B. Johnson, 716 Perpetual Building, 1111 East Street, N. W., Washington, D. C. 20004. I am an attorney at law admitted to practice before the Commission. I am appearing on behalf of Auto Driveway Company.

MR. SARSHIK: The Department of Consumer Affairs of the City of New York would like to renew its petition for leave to intervene at this time.

EXAMINER REILLY: Would you enter your appearance?

MR. SARSHIK: Steve B. Sarshik, 80 Lafayette Street, New York, N. Y.

EXAMINER REILLY: Do you have anything in addition to add, Mr. Kiel, other than that which you recited in your answer to this petition as originally filed?

MR. KIEL: Mr. Examiner, I attempted to outline fully the position of my client in the reply which I filed with the Commission dated January 6, 1972.

Since that time, I have received information not only as spelled out in the reply, but that on Tuesday, January 11, 1972, the Consumer Affairs Commissioner of the proposed intervenor did release to the public in a release of the Department of Consumer Affairs a statement with respect to certain alleged situations which occurred.

I would like to also point out that there is no reference in the petition of the Department with respect to any specific details of their interest.

However, this Department saw fit, instead of advising the Commission of their interest, to release it for public disposition, and probably the morning of January 12th, while I was shaving, early in the morning on WCBS, I was amazed to learn of certain of these statements coming over the radio, completely without any basis for them, and then later finding an article in the New York Post which, that was on January 11th, 1972, on page 67--which starts with a headline, "Bess rips auto delivers."

Now, in my understanding of what is fair and what is not fair, that is, that before findings are made with respect to facts, information should not be given out for newspaper and radio dissemination.

We have had no prior interest by the Bureau of Consumer Affairs, there had been no hearings with them, they took no evidence, we had no opportunity for confrontation, no notice. We don't know any details.

My clients met with Mr. Sarshik and persons in his office and offered to open files and make available to them any information that they wished. In any event, what I am saying, Mr. Examiner, is that is as devoid of merit as was pointed out in my petition, is an attempt by the Department to intervene, that the condition has really deteriorated to where we have had the benefit of a trial in the newspapers and over the radio with respect to what the Department's statement is of what disposition should be made of this proceeding, also alleging what we have done, and I submit that the information was garbled and mixed up, and I know that the Commission's understanding of fairness and due process is that a case such as this should not be tried in the newspapers by a person not a party to it.

I might point, too, that in no instance has the intervenor or the person attempting to intervene indicated that it would be directly involved in the movement of any automobiles. It is my position that the petition to intervene by this Department is merely a publicity seeking device in an attempt to make news to warrant such public interest as it deems appropriate for its affairs.

I strenuously object to the intervention by the Bureau or the Department, as it is referred to, for the reasons set forth in my petition and as detailed here.

MR. SARSHIK: Could I make a brief statement in reply, just taking a minute or two?

EXAMINER REILLY: No, I don't think so. One speech a morning is enough.

Since the Examiner and probably the Commission itself has not seen any of the material that you have cited, Mr. Kiel, I hardly think that I will be influenced by it, and I suspect the Commission will not be influenced by it, in addition to which, if the Department of Consumer Affairs has relevant and pertinent material related to this case which is admissable under the rules of evidence, then we will hear them, and I grant the petition.

Do you have a witness, Mr. Browning?

MR. BROWNING: Yes, I do. Mr. Rust, please, will you take the stand over there and be sworn?

RAY DEAN RUST

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) Will you please state your name and address for the record, Mr. Rust?

A Ray Dean Rust, 104 Rutgers Avenue, Berkley Heights, New Jersey.

Q What is your occupation?

A I am a member of the technical staff of the Bell Telephone Laboratories.

Q Where are you stationed, Mr. Rust?

A I am working at Whippany, New Jersey.

Q As a member of the technical staff for Bell Laboratories, do you hold any college degrees?

A Yes, I have a PH.D. degree in physics.

Q How long have you been employed by Bell Labs?

A As of May 11th it will be two years.

Q Did you reside in New Jersey, in the State of New Jersey prior to coming with Bell?

A No.

Q Where were you residing?

A Previously I resided in Austin, Texas.

Q What were you doing there?

A Going to school, finishing my Ph.D. degree.

Q Did you move from Austin, Texas to New Jersey?

A Yes, I did.

Q When was that?

A I came up May 11th of 1970.

Q Did you drive up?

A No. My family and I flew up. December 16th of 1969, we had a little girl who was born, so she was four and a half months old. The laboratory offered to move us up here, and since we had a little girl, a cat and our furnishings, we decided to come up by airplane. It was an easier route to come.

Q Did you own a car in Austin, Texas?

A Yes, a '68 Oldsmobile.

Q How did you get your car up here?

A It was transported by AAACON AUTO TRANSPORT.

Q How did you come to choose AAACON?

A As I was finishing up my degree, I talked to some of the neighbors about possible ways of getting my car up here, and one of the neighbors suggested AAACON. They said their phone number was in the telephone directory, in the yellow pages, and I found it there and called them up. Their office is in San Antonio, Texas, which is about 70 miles from Austin.

I contacted over the telephone their representative, Sally. That was her first name. I don't know her last name. I had a conversation with her telling her I would like to move up to New Jersey and I would like to have my car transported and I would like information. She gave me a rough cost at that time and also gave me--said that she would send me the brochure and proper forms to fill out to make arrangements.

Q Did she do that?

A Yes, very shortly after I talked to her, a day or two, I received information in the mail. When I received this, I decided to check to see what type of representation AAACON had. I called the Austin Better Business Bureau and what they told me was that they had one complaint and that the one complaint was from a lady whose automobile did not make it to where it was going, and they felt this was due to the fact that the automobile was not in good shape. This is what they had heard, and they felt this was not a legitimate complaint, that probably the car had something deficient with it.

From their recommendation, they felt this was not enough evidence to give them a bad name, so I took it.

Q What information did you specifically receive from AAACON from Sally?

A In the mail I received three pieces of paper. One was a brochure, information brochure explaining their operation and advertisement, basically, and two other papers. One was a freight bill for the owner and a freight bill for the regular company.

MR. BROWNING: I would like to have marked, Mr. Examiner, a freight bill of AACON.

EXAMINER REILLY: Marked for identification is Exhibit 132.

(Exhibit 132 marked for identification.)

THE WITNESS: If I may, I would like to make a few comments about their advertisement.

MR. BROWNING: In just a second. We will get to that in one second.

MR. KIEL: I want the original.

Q Do you have the original of what has been marked for identification as Exhibit 132?

A Yes, I do.

Q Will you look at what has been marked for identification as Exhibit No. 132? I ask you to state whether or not that is a true and accurate copy of the original document that you have in your possession.

A Yes, it is, down to even some notes I took, an Atlanta telephone number, even, that I wrote on it.

Q Do you have the one I gave you? Could I have it back?

A Okay.

Q You mentioned an advertisement. Would you like to elaborate on that, please, sir?

A Well, it outlined their operation. In the advertisement, it said that they were liability insured for three million dollars, my car was fully covered when it was on the road by AAACON, not some other company. So, therefore, it was carefully supervised entirely in transportation by their company.

Q Did the ad say anything about bonding of drivers, do you recall?

A They were fully insured for liability, was my information. My impression was that when I turned my car over to them, that they were responsible entirely for the insurability of the car and the care of it.

Q Do you happen to have a copy of that advertisement?

A I have one, not the original, but one very similar to it right here.

Q Okay.

MR. KIEL: Excuse me, Mr. Examiner. May I look at the paper the witness says he has since he says he didn't have the original?

THE WITNESS: This is a more recent one.

MR. KIEL: Could the witness be asked to explain that remark, about a more recent one, otherwise I am going to object to his testimony about something being in the original that he doesn't have.

MR. BROWNING: I would like to have this single page document, which purports to be a curcular or document from AAACON Auto Transportation, marked.

EXAMINER REILLY: Mark it for identification as Exhibit 133.

(Exhibit 133 was marked for identification.)

Q Before you go on to explain how you came by this advertisement, would you look at this, please, and compare what has been marked for identification as Exhibit No. 133 with the original document which you have? I ask you to say whether or not that is a true and accurate copy of it?

A Yes, they are the same.

Q That's not an original document that you have in your possession, that's another photocopy?

A Yes.

Q Where did you get that photocopy?

A It was sent to me by a friend per my request. He was moving and asked for information. He sent me a copy.

Q When was that, that you asked him?

A I am not sure of the date exactly.

Q Was it before or after you had your car shipped?

A It was after that. It was last year, about the middle of the summer.

Q That would be 1971, the middle?

A '71.

Q And Mr. Carlyle is a friend of yours?

A Yes.

Q Was he an employee of Bell Labs?

A We worked together.

Q Does Exhibit No. 133 resemble what you received in the mail from AAACON?

MR. KIEL: I object.

EXAMINER REILLY: Well, Mr. Kiel, let's get it down. Do you say that you put out more than one of these?

MR. KIEL: These things change, yes, sir. That may or may not be. I don't know.

EXAMINER REILLY: I am going to let him proceed for at least a little bit until we find out.

Q Are they similar?

A Yes, they are similar. The only difference, really, that I notice, is, in the one that I had they mention several companies that use the service, and apparently they removed that since this time. You notice the three million dollars, which I point out, was in mine, and the intent of this is that you are fully covered by them, which is the impression that I received.

Q What happened to the ad that you received in the mail?

A Since we were moving, I think it got lost in the movement. Unfortunately, we were in a panic the last few days getting everything set up, and I never did locate that.

Q Look at, if you would, please, Exhibit No. 132, and I ask you to state whether or not that is a copy that you retained in your record?

A As I showed earlier, this is my original copy that I had from the records that I received, and this is the owner's--car owner's copy which I kept. I filled this out and sent back to AAACON in San Antonio--there were two of these, the owner's copy and the one to be sent back. I sent the other one back and a check for $140, as it states down at the bottom, that the total price is $140, and I sent the $140 to them at that time.

Q Do you have your cancelled check?

A Yes, I do, made out to AAACON AUTO TRANSPORT.

Q What happened next, after you sent the freight bill that you had filled in along with your check to AAACON?

A Well, shortly after I received a call from Sally and I asked for a shipping day of May 4th. I think it was either the 3rd or 4th of May that she called me and said that they didn't have a driver yet, that they were looking for one and they would try to make arrangements as soon as possible, and that she would try to get it as close to that date as possible, but there may be a day or two delay.

This was the first information that I heard from her. Very shortly after that, she called me back again and said that she was very happy because one of their regular drivers, Mr. Nelson Beck, had come in, William Nelson Beck, and that he had come in and they were going to use him as a driver;

they were fortunate because he had driven for them before, he was a regular employee of the company and they didn't have to check him out as extensively as the other drivers since he was a regular employee.

I said, "I am glad to have one of your regular drivers," and she then said he would come up. We made arrangements, since we only had one car and we lived in Austin and we didn't want to drive down to San Antonio and have to come back to Austin--we made arrangements that Mr. Beck would come up to Austin and pick up the car at my apartment and then drive from there and that was considered in the cost and everything else. And apparently AAACON bought a ticket for him on the bus. She told me his schedule when he would arrive, and I met him at the bus and picked him up.

Q Did you have any conversation with him at that time?

A Yes. As I picked him up and took him to my apartment, we talked quite a bit about several things. He told me that he had worked for the company for twelve years with no accidents, that just recently he had driven a car across the United States, it was a very expensive car, that as he arrived at his destination, the owner tipped him $500 because of the care that he had taken with this very expensive car, that he never had any accidents in his time.

He impressed me with the fact that he was chewing gum and he didn't want to smoke while he was driving. He said he drove about 150,000 miles each year.

Q This was in the course of your driving him from the bus station to your apartment?

A Yes.

Q When you arrived at your apartment, what happened at that point?

A I parked the car outside and he got out of the car. My wife came out. We were going to transport some baby things and then some flowers in the trunk of the car, which is allowed, as noted over here. When I filled out this copy of this freight bill, I said there would be some equipment in the back of the car, in the trunk, and so we talked to him about that. He said, fine, he would even take care of the flowers and this sort of thing.

My wife talked to him. He said he needed the automobile registration, so I went inside the house and got the registration while he began to go through a check list of the bill of lading, which he had with him at the time.

And so I went inside, found my registration and came back outside where he was finishing checking off the car. One thing he noticed, for example, was that the tires were moderate, they had been worn some, but were moderate tires, not new. He also noticed there was a scratch on the driver's door, which he noted on the freight bill and checked it off .

on his check list.

He was talking to my wife at the time and told her that, "You have to be careful about these things, that you don't get blamed you scratched the door."

Q He was making notes on the bill of lading or the freight bill?

A Bill of lading, which I had not seen before.

Q In other words, he brought the bill of lading with him, is that correct?

A Yes.

Q Had you seen that bill of lading or anything like that before?

A No. All I had seen before was these two I had filled out earlier.

MR. BROWNING: I would like to have marked for identification a bill of lading of AAACON.

EXAMINER REILLY: Marked for identification as Exhibit 134.

(Exhibit 134 was marked for identification.)

Q I hand you what has been marked as Exhibit No. 134 and ask you to state whether or not that is a true and accurate copy of the original document that you have in your possession?

A Yes.

Q Let me ask you this--

MR. KIEL: I want to look at that.

Q Will you state, please, what document--what is that document that you have in your possession?

A This is the original.

Q Yes.

A What is it?

Q Yes. Is that the original bill?

A This is the original bill of lading, and it is the original which--it's a copy of--well, this is the part that Mr. Beck gave to me. I signed the original, and this is apparently the second copy underneath.

MR. KIEL: Mr. Examiner, may I suggest that we all write in on Exhibit 134 what is printed on the bottom of the document that the witness has on a yellow paper which is marked "Car owner's copy," which is not carried forward on the duplication.

MR. BROWNING: That is a very good idea.

Q So you have the car owner's copy in your possession, is that correct?

A Yes.

Q Is that an accurate reproduction of that with the exception of the fact--

A That it can't be seen at the bottom.

Q Where did you sign that, sir?

A Well, I came out with the registration and Mr. Beck had just finished his check list noting the scratch and various other things, and he said, "Well, okay, here is the agreement" And, I signed it on the trunk of my car.

In fact, he was ready to go and I signed it in the wrong place, I find, "Consignee, delivered in the above condition." In the haste of the case, I think it was signed incorrectly.

Q Now, did you read it before you signed it?

A Not thoroughly. I just glanced at it. As I said, Mr. Beck was in a hurry to go.

Q You didn't have the opportunity to read it, is that correct?

A Not fully. I just glanced at parts of it. The time elapse between when we arrived and when he left could not have been twenty minutes.

Q That included the inspection?

A Yes.

Q Mr. Beck's notes appear at the top as to the condition of the car, is that correct?

A Yes, that's his writing, other than my signature.

Q At that point in time, what was your understanding and belief as to the insurance coverage on your car?

MR. KIEL: I object.

EXAMINER REILLY: Just a moment. The objection is overruled. Go ahead.

A My understanding was that when Mr. Beck left, that the car was fully covered by AAACON, that I had no longer any responsibility with him.

Q What did you base that on?

A I based it basically on the previous information that I had up until that day when Mr. Beck arrived with this new bill of lading, which I had not seen.

Q Now, Mr. Beck took your car off at that point, did he not?

A Yes.

Q Did you ever see Mr. Beck again?

A No, I didn't.

Q What happened next?

A Well, several days passed. On the 11th, my wife received a phone call in the morning from Sally, and she said, "Has Mr. Beck contacted you?" And my wife said, "No." And she said, "Well, there has been a minor accident with your car in North Carolina." And Sally didn't know a lot of information. She thought maybe Mr. Beck was injured or something. He had called her, apparently, and told her there had been a minor accident and he never did contact us.

My wife asked, what about the schedule of getting there, and today is the 11th, and she said, "Well, since it's a minor accident, Mr. Beck will get it fixed up and drive up to Whippany and have it there as soon as possible, within a few days."

Q That is what occurred?

A It didn't occur that way at all. That's the assumption we operated under.

Q Do you know what happened after that in the way of information received by you as to what happened to your car?

A Well, at the time, it was several days lapse, as I said, we were ready to fly out on the 11th--actually, we flew out on the 12th, the next morning, and we went on, loaded our family and flew up here expecting the car possibly to even be here that next day.

She didn't know for sure when the accident occurred and she thought maybe he would have it. We arrived at Whippany with our family and no car, and so I still went under the assumption that it will be here shortly.

So we moved into a motel to look for a place to live and rented a car of our own for transportation until the car woul arrive.

Since we were looking for houses, we had to get around.

Q Do you know when you received any information concerning the whereabouts of your car?

A Only from my own instigation later on. After several days, I began to worry about it. As I said, we sent baby equipment along in the trunk of the car, and we expected this to be here so we could handle things, diapers and so on. We were rather inconvenienced.

So I finally called Sally back in San Antonio, since she was the person I had contact with, and she told me that the car was apparently damaged worse than she thought and that it was in a garage, Wells & Seals Garage in Morganton, North Carolina, and with that information that she didn't know much more about--and she was still worried about Mr Beck, what was going on--from that information, then I again instigated a phone call and I called the Wells & Seals Garage in North Carolina and I talked to Marie Dale there and she then gave me a rough outline of what happened in the accident. Apparently Mr. Beck was drinking while driving--

MR. KIEL: Objection, Mr. Examiner.

Q Are you just relating--

EXAMINER REILLY: He is relating what he was told as a result of inquiry he made to the place where the car was then residing.

MR. KIEL: I appreciate it, but I object on the grounds that it is hearsay.

EXAMINER REILLY: I have already stated the reason for my ruling. The objection is overruled.

MR. KIEL: May I ask what you reconsidered based on my further comment?

EXAMINER REILLY: I have reconsidered, Mr. Kiel, and the ruling stands.

A The information I received was that Mr. Beck was drinking while driving, he ran the car off of the road, striking it from the rear, the car was overturned, and that he then ran away, fled from the scene of the accident, hit and run, and was run down by the Highway Patrol, and they told me the patrolman's name, Carter, and gave me his telephone number.

I called Patrolman Carter to find the true details of the accident. He verified that Beck had been drinking and that it was hit and run, that my car was impounded in the Wells & Seals Garage, and his information was the same, that Mr. Beck at the present time was in jail. It was the same as Marie Dale had told me, only in fuller detail.

Q Did you receive anything in connection with the accident from the insurance company who insured the other car?

A Yes, I did.

Q What was that?

A I think it was May 19th I was informed that this other car was involved in an accident and that it had been damaged, and it stated in this that he was charged with drinking while intoxicated and hit and run involving personal injury, and then that I was to contact Mr. Crain.

MR. BROWNING: I would like to have marked for identification this single page document, being the letter just referred to.

EXAMINER REILLY: Mark it for identification as Exhibit 135.

(Exhibit 135 was marked for identification.)

Q I ask you to state whether or not that is a true and accurate copy of what you got?

A Yes, it is.

Q Did you receive any documents from the State of North Carolina in connection with it?

A Yes, I did. This was later. On June 2nd, I received information that my car was impounded or was wrecked and not in running condition, and that I should contact the storage agency, which was Wells & Seals Garage.

Q Is this it right here?

A Yes.

MR. BROWNING: I would like to have marked for identification this single page document, Mr. Examiner.

EXAMINER REILLY: Mark it for identification as Exhibit 136.

(Exhibit 136 was marked for identification.)

Q I hand you what has been marked for identification as E[illegible]it No. 136 and ask you to state whether or not that is a true and accurate copy of the original document to which you have just referred in your testimony.

A Yes, it is.

Q Did you ever get your car out of the garage, out of there, and if so, how did you do it?

A Yes. When I discovered this, there was one other thing that I received from North Carolina, information that my driver's license had been revoked in North Carolina, Order of Suspension, which came to me June 30th, and I wrote back to them saying that I was insured, you have to fill out this form for insurance, and I received a reinstatement, that my insurance had been received for the notice of that.

MR. BROWNING: I would like to have marked a single page document.

EXAMINER REILLY: Marked for identification as Exhibit 137.

(Exhibit 137 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit 137 and ask you to state whether or not that is a true and accurate copy of the original document which you have in your possession, which you received, and about which you have testified.

A Yes, it is.

Q And you said you filed with the State of North Carolina a statement that you were insured, is that correct?

A Yes.

Q Or something similar to that?

A A statement of my insurance policy and who I was insured with.

Q You received something from North Carolina, did you not, after that?

A Yes.

MR. BROWNING: I would like to have this marked for identification, Mr. Examiner.

EXAMINER REILLY: Letter of July 15th, 1970, from the Department of Motor Vehicles, Driver's License Division, to Mr. Ray Rust, marked for identification as Exhibit No. 138.

(Exhibit 138 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit 138 and ask you to state whether or not that is a true and accurate copy of a document to which you have just referred as having been received from the North Carolina State Police?

A Yes, it is.

Q Department of Motor Vehicles?

A Yes, it is.

Q You were about to testify, I believe, sir, about how you extricated your car from the garage in North Carolina.

A Yes. I might say first that I became worried about all of this information being sent to me, so I decided to contact AAACON'S local New York office, and I did, and spoke to Mr. Bob Maxwell. He told me at this time to send him everything that I received and to send it on to him and the originals of some of these that just have been introduced as evidence were sent to him, to Mr. Maxwell.

Q Who instigated all these calls, was that you?

A Yes, I did, working for Bell Telephone, at my company's expense.

Q With the exception of the May 11th, 1970 call, from Sally, did AAACON ever call you in connection with this accident?

A No. All response was through either my questioning and they would respond to my questioning, but nothing else, my conversation finally getting around to your question, my conversation with Mr. Maxwell. After I talked to him, first he said he knew nothing about the accident, to send all the information to him. I called him later and he said, well--I told him I needed my car up here, several weeks had passed by this time, and he said, "We will have your insurance company subrogate with us and--".

So I called my insurance company and said that this was the information that I had received and that I would like to have my car, and Mr.--well, my insurance company then looked into the case. They temporarily repaired my car in North Carolina. I think the damages for temporary repair were $200 and just to get it in driving condition so it could come on up to New Jersey and have it finally repaired there.

Q When did it finally arrive?

A Well, it was two months, to two and a half months after we arrived in New Jersey, which was--we arrived May 11th, so it was approximately two, two and a half months after that.

Q When was it supposed to have arrived?

A It should have been here by May 11th.

Q Do you know who arranged for transportation of the car up here?

A Yes. Once the car was repaired, I again called Mr. Maxwell, told him what my company had done. He said, "All right, we will get it up here for you." I didn't know what he was going--he said that he would get it up here. They apparently found someone to drive it up, and the car was driven up by another agency, another driver. I think I have his name here. A Mr. Paul Lackey drove the car up.

Q With what company was he affiliated?

A He says that he was--I believe it's ACA Transportation.

Q Do you have any documents there that was signed by Mr. Lackey?

A Yes, I do. When he arrived, he presented me with gasoline costs, tire repair and labor. When my car was hit, it damaged the front fender and pushed the fender into the tire and dug deeply into the tire, and when it was temporarily repaired, they did nothing but pump up the tire. He had to put a tube in it and had to do extensive repairs on the tire.

I was presented with a $15.45 bill.

Q Do you have those documents with you?

A Yes.

MR. BROWNING: I would like to have marked for identification a vehicle transfer contract of Augusta Car and Aircraft Transporting Company.

EXAMINER REILLY: Marked for identification as Exhibit 139.

(Exhibit 139 was marked for identification.)

MR. BROWNING: Also a single page document, which is a photocopy of credit car sales from the Humble Oil Company, Esso.

EXAMINER REILLY: Marked for identification as Exhibit 140.

(Exhibit 140 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit 139 and 140 and ask you to state whether or not these are true and correct copies of documents that you have in your possession about which you just testified?

A Yes, these are.

Q Do you have or, rather, can you tell us what happened after you received your car in connection with the accident, if anything?

A I received the car and took it to a local area to be repaired. Shortly after that, I wrote a letter--I called Mr. Maxwell again and told him that my car was up here and that

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I was going to be paying the $100 deductible from my insurance policy on this and asked him if they would refund this, AAACON would, and he said, yes, to write a letter and I did on August 27th, 1970, to Mr. Maxwell, requesting that my $100 deductible be paid. And, also in the transportation there was a flower pot that was broken, and I requested that it be replaced for three fourteen. Therefore, the sum was $103.14.

Q What were the cost of repairs to your car up here?

A The total cost of repairs once it was received here--that is not the 200--that was $1,200. It was extensively damaged. The frame was bent and various other things.

I might also point out that these $15.45 bills that I received from Mr. Lackey, my insurance company reimbursed me on that.

Q In connection with the bending out of your fender so that your car could drive after it had been temporarily repaired, made operable down there, do you have a bill from anybody in that regard?

A I have a release, basically, which Mr. Lackey gave to me. He more or less apparently had to release it this way. That cost was not reflected to me in any way, but I do have this that I received from him.

Q That is what he delivered to you, or, rather, he furnished you with that document when he arrived up here with the car, is that correct?

A Yes.

MR. BROWNING: Mr. Examiner, I would like to have a document marked for identification to which the witness has just referred, the Wells & Seals bill of $7.

EXAMINER REILLY: Marked for identification as Exhibit 141.

(Exhibit 141 was marked for identification.)

Q Do you have a copy of the bill relating to the original repairs to your car to make it operable?

A No, I don't. I never received that. My insurance company handled it entirely for me.

Q They paid for those repairs. Did they also pay for the repairs up here that were done to your car, in New Jersey?

A Yes. Again, I don't have the bill on that. They handled that.

Q Did you write Mr. Maxwell in connection with your claim for the $103 or so?

A Yes, I just referred to that, and I wrote him a letter and sent it in to AAACON.

Q What date was that letter?

A August 27th, 1970.

MR. BROWNING: I would like to mark for identification, Mr. Examiner, a letter to which the witness has just referred.

dated August 27th, 1970, to Mr. Bob Maxwell.

EXAMINER REILLY: Marked for identification as Exhibit 142.

(Exhibit 142 was marked for identification.)

MR. KIEL: May I ask, do you have the original of this, or do you have a copy of this, or did this come out of applicant's files?

THE WITNESS: I have a copy of that. That's a copy of my original letter.

MR. KIEL: Thank you.

Q Will you compare it with what has been marked for identification as Exhibit 142 with your copy? Is that a letter that you sent to Bob Maxwell dated August 27th, 1970?

A Yes, it is.

Q That photocopy that you have in your possession is a copy that you made of your letter?

A Yes. I wrote it by hand, as you can see, and then copied it so that I would have a record of it.

Q Did you get a response from AAACON from that letter?

A Yes. No verbal response, but I received a check from them for $100. This was sent to me.

Q Did you receive any communications at any time from AAACON?

A No other information.

Q I said communication. I am sorry. Communication. Did you receive any kind of communication from AAACON at any time?

A Did they ever instigate a call to me to tell me something specifically or in response to my call?

Q Yes, that, or written communication.

A I never received any written communication. They would respond to my calls, but they never instigated anything.

Q What happened after that, after you got your car repaired, you got the $100 from AAACON, what happened next?

A Once my car was repaired, I more or less thought that the matter was going to be handled by my insurance company and was to be closed. I had been sending all this information to Mr. Maxwell as these things came to me. Then in January of 1971, I received a complaint from the State of North Carolina concerning Alda and Jessee Wilson Lewis, which was sent to me, of a case complained against myself as well as AAACON and several other people who were listed on this complaint.

Q Do you have copies of that with you?

A Yes, I have them both.

MR. BROWNING: Mr. Examiner, I would like to have marked for identification a multi-page document. Let me have marked for identification a multi-page document being two complaints served on Mr. Beck in the case of Jessee Wilson Lewis against William Nelson Beck, Triple AAACON Auto Transport, Inc. of

San Antonio, Texas, Triple AAACON Transport of New York, and a second case of Alda Lewis against the same defendants.

EXAMINER REILLY: Marked for identification as Exhibit 143.

(Exhibit 143 was marked for identification.)

Q Mr. Rust, I will ask you whether or not you had these copies made of what you have in your possession, what was served on you. I am referring now to Exhibit 143. Those are copies you had made, is that correct, sir?

A Yes, I actually made these. Well, I made them and they are a copy of the record that I have.

Q What action did you take upon receipt of these complaints, Exhibit 143?

A Well, the first thing I did was, I called Mr. Maxwell and asked him, "What about this?" He assured me that they would take care of everything, AAACON would take care of it. And, I contacted my insurance company, and they suggested that, again, I not have anything to do with it and to send it down to their North Carolina office. I sent it back to the North Carolina office, and I understand that they then sent it to a lawyer, Mr. Dumont, who they had hired to handle this case for them in North Carolina, Mr. Harry Dumont. So, I sent it back, basically.

Q Did you communicate with Mr. Dumont, the attorney in

North Carolina?

A Yes, I later called him and asked him what was involved. I might mention that the total asking for these two complaints is $510,000.

Q What is the extent of your coverage under your policy?

A My extent is $50,000, and I was informed by my insurance company that the complaints were more than my liability.

Q Does Mr. Dumont also represent you in North Carolina in connection with these lawsuits?

A Yes.

Q When you talked with Mr. Dumont first, did he tell you or did he indicate to you what course of action he intended to pursue?

A Well, his first intention--since I talked to him, I told him that Mr. Maxwell said that they would take care of everything with the case, and so he said, "All right, let's send the complaint to him and let them handle it."

Q Did he do that?

A Yes. He wrote them a letter January 27th, 1971.

Q Did he send you a copy of that letter?

A I have a copy of that letter, yes.

MR. BROWNING: Mr. Examiner, I would like to have marked for identification a copy of a letter from attorney Dumont to Mr. Robert Maxwell.

EXAMINER REILLY: Marked for identification as Exhibit

144.

(Exhibit 144 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit 144 and ask you to state whether or not that is a true and accurate copy of the document to which you just referred.

A Yes, it is.

Q What response, if any, did he receive from AAACON to that letter, if you know?

A Well, Mr. Dumont said that he received no response from AAACON as to handling the case, that they would not take it.

MR. KIEL: I am sorry, I didn't hear the last remark.

THE WITNESS: That AAACON would not handle or take the case in our behalf.

Q Do you know the total amount of claims against you specifically in the North Carolina suits?

A Yes, for actual injuries the total is $370,000, of which I am one of the defendants.

Q Do you know of the current status of that case?

A It's still pending. Recently AAACON moved for a motion to be released from the case, a summary judgment, and at that time my lawyer, Mr. Dumont, representing me, filed an affidavit in our behalf saying we feel that they should not be released from the case and actually that they were fraudulently re- --

presenting their services in handling of the entire operation of moving my car.

Q Is the driver named as one of the defendants in the North Carolina lawsuit?

A Yes, he is. He is first on the list, Mr. Nelson Beck.

Q Do you know anything about his present whereabouts?

A He is missing and being presently sought by the F.B.I. This was communicated to me through my lawyer, Mr. Dumont. He was contacted by an F.B.I. agent, Mr. Cincotta, trying to find out what information he knew about Mr. Beck's whereabouts, and at this time he discovered that Mr. Beck had an extensive record for auto theft and interstate transportation in auto theft as well as robbery, assault, escape from prison several times, also.

Q Did Mr. Dumont communicate that to you?

A Yes, he wrote me a letter, in fact, concerning this.

Q When was that, sir?

A I have the letter of February 22nd, 1972.

MR. BROWNING: I would like to have marked for identification a multi-page document being a copy of a letter to which the witness has just referred.

EXAMINER REILLY: Marked for identification as Exhibit 145.

(Exhibit 145 was marked for identification.)

Q I hand you what has been marked ~~for identification as~~

Exhibit 145 and ask you to state whether or not that is a true copy of what you have in your possession, being the original letter to which you just testified, from your attorney, Mr. Dumont.

A Yes, it is.

Q Do you know whether Mr. Dumont filed an affidavit in connection with that lawsuit as to his contacts with the F.B.I.?

A Yes, he did. I filed one and he also filed one.

Q Do you have a copy of his there?

A I think I have a copy of mine. I think I have a copy of his, too.

MR. BROWNING: I would like to have marked for identification an affidavit of Mr. Dumont in connection with the lawsuit in North Carolina.

EXAMINER REILLY: Marked for identification as Exhibit 146.

(Exhibit 146 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit No. 146 and ask you to state whether or not that is a true and accurate copy of the document that you have in your possession that was sent to you by your attorney, Mr. Dumont.

A Yes, it is.

Q Did you also file an affidavit in connection with that case?

A Yes. I referred to it earlier, yes.

MR. BROWNING: I would like to have marked for identification a copy of an affidavit of Mr. Ray Rust.

EXAMINER REILLY: Marked for identification as Exhibit 147.

(Exhibit 147 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit No. 147 and ask you to state whether or not that is a true and accurate copy of a copy of an affidavit that you filed in connection with this case, or, rather, that you sent to your attorney in connection with filing in the North Carolina case.

A Yes, it appears to be.

Q That is a copy that you have in your possession of what you sent your attorney, is that correct, for filing?

A Yes. It is not signed because I copied it before I sent it to him.

Q You mean your copy is not signed?

A My copy is not signed. The original is signed.

Q Was signed and was notarized, is that correct?

A Yes, it was notarized.

Q Where was it notarized?

A It was notarized at Bell Labs in Whippany.

Q By a Notary Public?

A Yes.

Q Do you recall her name or his name?

A It was a she. No, I don't.

Q Do you know anything of a disposition of the claim in the case against Beck in North Carolina?

A Oh, you mean involving the hit and run accident?

Q Let me ask you first, do you know whether or not Beck was ever brought to trial in the State of North Carolina?

A Yes, he was, and he was convicted.

Q Convicted of what?

MR. KIEL: If Your Honor please, I object.

EXAMINER REILLY: We will find out how the witness came into possession of this knowledge before I rule on it.

MR. BROWNING: Mr. Examiner, I have certified copies of the court records down in the State of North Carolina which I received this morning from Mr. Dumont. I tender to you the original that he sent me, being certified copies of court records in Superior Court, in the General Court of Justice, District Court Division, County of Burke, State of North Carolina.

EXAMINER REILLY: Are these all separate documents, or do I have to find out what they are?

MR. BROWNING: I may have given you too many. Let's see

Let me see if I gave you too many. Just a second. I think I may have given you too many. Just feel for the seals. That's one of the reasons, I may have given you too many here. They all look the same. That's the original there, I believe.

EXAMINER REILLY: The seal is apparent on this.

MR. BROWNING: Yes. Fine.

EXAMINER REILLY: Marked for identification as Exhibit 148.

(Exhibit 148 was marked for identification.)

MR. BROWNING: I move the admission of that document at this time, Mr. Examiner as a counsel's exhibit.

MR. KIEL: I want to look at it first. I don't even know what it says. You put it in in one minute and I haven't had a chance to look at it.

EXAMINER REILLY: I am not going to receive it yet.

MR. BROWNING: Those are all the questions I have of the witness at this time.

EXAMINER REILLY: We will take a short recess before cross examination.

(Recess taken.)

EXAMINER REILLY: On the record.

We will recess for lunch now.

(Luncheon recess taken at 1:00 o'clock p.m.)

AFTERNOON SESSION

2:00 p.m.

EXAMINER REILLY: The hearing will be in order.

All right, Mr. Kiel, you may cross examine.

CROSS EXAMINATION

Q (By Mr. Kiel) With respect to the driver, Mr. Beck, did he show you a card which he had which would indicate the name of any company that he had driven for previously?

A No, he didn't show me any card.

Q Did you see the accident report which was prepared by the police officer at the scene of the accident, Patrolman Carter?

A No, I haven't.

Q Did you know that the driver was shown as being an employee of Auto Driveaway Company of Chicago, Illinois?

A No.

Q Do you know that, as shown in Exhibit 143, the company is referred to as Driveaway Company, Inc. and the address of the company so shown in the documents that counsel has introduced refers to an address in Chicago, which is the address of Auto Driveaway Company?

A I did see the Driveaway Company, Inc., on the complaint, yes.

Q Is it my understanding that you had no business dealings with Auto Driveaway Company, Inc.?

A None whatsoever.

Q Weren't you told that the driver that was going to be used for your car was driving for the Driveaway Company?

A No.

Q Did you hear of the Driveaway Company, Inc. then?

A Not until I saw it here.

Q You have a recollection that you were told that the driver had driven automobiles and performed this type of service in the past, though?

A Yes, Sally informed me of this.

Q Sir, did you tell the driver when you signed Exhibit 143, which is the bill of lading agreement, that you wanted to read the document more carefully and that you wanted some more time to do so?

A As I said, when we arrived at our place, it was a very short time interval between when we arrived and when Mr. Beck checked off this list, and I did recognize a check list at the top, and I realized that that's what he was doing and saw some small print, but he was in a hurry to leave. If I had known what I was getting into, I certainly would have a lawyer look at it, obviously.

Q Would you have felt better if the carrier had supplied you with a copy of the type of document such as Exhibit 134 in advance so that you could have looked at it and examined it?

MR. BROWNING: I object to it as being irrelevant and immaterial.

MR. KIEL: I think--

EXAMINER REILLY: I am going to let the witness answer the question.

A It would have been better to have the document before. As I said, I had not seen that until that day. However, having looked through it more carefully afterwards, it's written in such terms it's very difficult for a layman to understand without counsel.

Q Going back to my question, isn't it a fact that you didn't tell the driver to wait, that you wanted to read this document more carefully?

A I did not tell him that I wanted to read it more carefully, no.

Q Exhibit 133, you indicated that you got this from a friend of yours?

A Yes.

Q Did your friend actually ship an automobile, the one shown on the document?

A He considered it, but he changed his mind.

Q Was this sent for the purpose of your getting another copy of it?

A He was considering going to Washington.

Q It had nothing to do with your move?

A Once he received it, he gave it to me.

Q Did he send for it in order that he might give it to you?

A He was thinking of going to Washington.

Q I understand that. But did he make the inquiry so that he could give you the document? You can say yes or no if you wish.

A Actually, yes, I asked him if he could also check with this company, and he said yes.

Q Mr. Witness, looking at Exhibit 133--

MR. BROWNING: I don't think the witness knows what you are talking about.

Q That is the document with Mr. Carlyle's name on it.

A Yes.

Q Do you know when that was sent for? There is no date on the document.

A It was, as I said in testimony, I think it was around the middle of '71, but I am not sure, at which time I discovered I did not have my original. I did want to find out what it was in reference to.

Q With respect to Exhibit 132, that is your freight bill, owner's copy, do I understand that you completed this document and sent the carrier's copy to them and kept this owner's copy?

A Yes.

Q And when you sent the carrier's copy to them, the box which is to the right of the form and refers to the luggage list was completed?

A At that time, yes.

Q You understood that that was to be completed and submitted with the information?

A I had filled it out as you see it.

Q Sir, you discussed a number of telephone calls that you made to AAACON, and one of those, I believe, was sometime in the middle of May of 1970.

A Yes.

Q Do you recall that?

A I recall it at that time, yes, sir.

Q Do you also recall your statement that the only call that you received from any representative of AAACON, that is, where you didn't make the call, was one that you got from a girl named Sally on May 11th?

A Yes, other than the responses to when I called and they weren't in and they called me back.

Q I see.

A There were responses to my call.

Q As a matter of fact, AAACON did call you--

A After my instigation of the call, yes.

Q You might have called on one day and then they called you on another day?

A Yes, as I stated earlier, in fact.

Q Did they call you back each time or send you information when you requested it?

A Yes, except for the one time, as I said, when I sent for information for the $100 check, and rather than contact me back, I received the check, and there was no--

Q Correspondence?

A No correspondence, no phone call.

Q By the way, you have a copy of that check, too, don't you?

A Yes, I do.

Q Would you get the check and read us what is written on the back with your endorsement, cashing the check?

A The endorsement on the back says, "In full settlement, AAACON Auto Transport, Incorporated, for $100 deductible insurance, Ray Dean Rust," with "deductible" misspelled.

Q Isn't it a fact, as you indicated, that you filed only one claim for damages to your automobile with AAACON, and that was for the $103 and some odd cents?

A As I stated in my letter, that this was my $100 deductible, yes. I was under the impression from Mr. Maxwell all the time that my company and he through subrogation would handle the rest of it.

Q As far as you were concerned, the carrier paid you $100 of the $103 and you accepted that and cashed the check?

A I accepted that as my $100 deductible, yes.

Q You were aware that the carrier was going to settle any other claim by your insurance company or any other person that might result from this separately?

EXAMINER REILLY: I think you have used a not very good choice of language. He isn't aware they are going to settle anything.

MR. KIEL: Let me withdraw it.

Q Did Mr. Maxwell advise you that the moneys that your insurance company had paid you would be worked out with your insurance company as they were subrogated to your interest?

A I had been given the impression, as I said earlier, that AAACON would handle all the rest of the circumstances, which as of this time has not been exactly the case. There has been much miscommunication and, as I also mentioned earler in testimony, there was a summary judgment recently in North Carolina for AAACON to be removed from the case.

Also the nonreply to my lawyer in representing--having AAACON take over my representation in the case.

Q Let's separate the damage to your automobile to a question of liability to a third person.

Do you know the status of the cargo damage, that is, the damage to your automobile over and above what you were paid as it relates to the relationship between your insurance company and AAACON?

MR. BROWNING: I object unless there is some basis for the question.

EXAMINER REILLY: Do you know if there has been any settlement between AAACON and the insurance company with respect to the damage to the automobile itself and no personal injury problem?

THE WITNESS: The latest information that I know, there was no settlement.

Q Do you know whether your insurance company filed a claim with AAACON for that amount?

A I do not know the details.

Q With respect to the litigation that you are talking about, isn't it a fact that that relates to a so-called third party liability, that is, the people who were injured in another vehicle when your car was in an accident with that other vehicle? That's the litigation that you know about, isn't that so?

MR. BROWNING: Mr. Examiner, I think that is an unfair question. He knows what the documents show and what he has already testified concerning it.

EXAMINER REILLY: I think it is rather clear that these two documents, Exhibit 143, which is two documents, is a personal injury claim, and this is what he knows.

Q With respect to the document, Exhibit 137, that is the--

MR. KIEL: Give him 138, too, so we don't have to repeat what we say each time.

A 137 and 138.

Q Look at 137. Isn't it a fact that you received this letter, which is Exhibit 137, sometime shortly after June 30th?

A Yes.

Q Long before July 15th?

A Before July 15th, yes.

Q And that as soon as you received this, you sent the North Carolina Department of Motor Vehicles a form that--filled out or had a form filled out and returned it to the North Carolina Department of Motor Vehicles?

A After receiving this, I wrote a letter saying that I did not know what their form was, but that I was insured and that my insurance carrier was--who it was, and also my insurance policy, and I sent that back.

Q You received a letter, which is Exhibit 138, dated July 15th?

A Yes.

Q And, I assume, you have read Exhibit 137 and 138, have you?

A Yes, I have.

Q Will you agree with me that at no time was your right to drive a motor vehicle in North Carolina suspended?

MR. BROWNING: Mr. Examiner, if he can answer that question, I don't know that, if he can, really.

EXAMINER REILLY: I don't know what it adds to the record, anyhow. It seems to me this is fundamentally academic.

MR. KIEL: The witness said that his license to operate a motor vehicle in North Carolina was suspended as a result of this situation, and I submit that the Exhibit 137 clearly indicates that the effective date of suspension would be July 15th.

EXAMINER REILLY: You know, Mr. Kiel, as I read this, there is a very positive threat that it was going to be suspended if he didn't do something, and that is why I assume the letters were introduced.

MR. KIEL: I believe, Mr. Examiner, that the testimony indicates that this witness testified that his right to drive was suspended in North Carolina.

MR. BROWNING: No, sir, it does not.

MR. KIEL: As long as counsel agrees that that was not said and wasn't intended to be said, I have nothing further to go into as far as that point is concerned.

MR. BROWNING: I agree that the record says what it says. I don't believe the record says that.

EXAMINER REILLY: In any event, whatever the record says in the past, it is clear that the license was not suspended, but the threat did exist because of the communication.

Q Sir, with respect to Exhibits 139 and 140, in Exhibit--

MR. BROWNING: Just a minute.

Q --with respect to Exhibit 139, in a line entitled, "Transfer Fee," there is a sum of $15.45. Do you see that?

A Yes, I do.

Q If you add up the figures on Exhibit 140, that comes out to $15.45.

A Yes.

Q Didn't you understand that the $15.45 was for the item shown on Exhibit 140?

A Yes, I did. I also said that the extensive tire repair that was done was due to the accident since my tire was scarred and cut. Therefore, he had to add a tube and various other things.

Q You said also that you were reimbursed by your insurance company for this?

A Yes.

Q You personally didn't make the claim against AAACON for the $15.45?

A No, I didn't.

Q With respect to the $15.45, my notes, at least, show that this was a bill that was given to you by the driver driving your car, that it included charges for gasoline.

A Yes.

Q Would you look at Exhibit 140 and tell me, sir, if anything on Exhibit 140 refers to gasoline?

A No, they are all tire repairs and labor on gasoline cards.

Q And that was where your error was?

MR. BROWNING: He didn't make an error, Mr. Examiner. We were talking about credit cards.

EXAMINER REILLY: We all know what the record says. There was $15.45. The supporting document shows clearly what it is. There is no gasoline in there.

Q Sir, would you refer to Exhibit 141? You have a better copy. It is the Wells & Seals bill for $7. Mine is not completely legible, and I would like to get some detail about what is actually written in the body of the work order.

A What area do you want? Can you show me that?

Q The center part. Would you--

A It says, "This car delivered to--

Q Go slowly so I can write it out. Yes?

A "--Major Paul Lackey.

Q L-a-c-k-e-y?

A L-a-c-k-e-y, yes. And I believe it's ACA Transporters. And then there is a date, 6/25/70, and in the labor cost over there there is the $7.

Q So that I may be clear, was this the repair charges to get your car ready to be transported the rest of the way from North Carolina to New Jersey?

A As I said in my testimony, I don't know what this was. Lackey gave it to me. I was never billed by him for the $7.

I don't know what the $7 is associated with. He just gave this to me when he turned over the other evidence, the other bills to me.

Q I have a recollection of some indication that there was a charge of $100 or $200 to get the car ready for traveling.

A For repair so it could be drivable.

Q This is not the charge?

A Obviously, it isn't.

Q Did you pay that?

A This?

Q No, the $100 or $200 to get the car ready?

A No, I didn't.

Q Might this then be the amount to get the car ready?

A No.

Q Just to get the fender away from the tire so it can be driven and steered?

A No, because the frame was bent, and I do know that in the operation of straightening the frame that they use a Welding torch on it. As a matter of fact, when it was repaired in New Jersey, the guy groaned when he saw what they did to the car to get it up here. So it was more extensive repair. I think they also worked on the radiator, from the looks of the car when it arrived, and I do know that the costs were more than $7.

Q Did you at any time make known to AAACON the information that you had developed with respect to the first driver that they used to transport your car as far as North Carolina, who was involved in the accident?

A What are you referring to explicitly?

Q The record of some of his convictions and charges.

A That was entirely new information that my lawyer had found out in North Carolina, which he then gave to me as part of our information.

Q The first information is what you got from the F.B.I.?

A I had been informed he was one of the regular drivers and, therefore, he did not need to be checked out.

Q Weren't you informed actually that he had driven in the past automobiles of this type and that he had been driving for another authorized carrier, Auto Driveaway Company?

A No. The information I testified to was that Sally said that, "Mr. Beck is one of our regular drivers and, therefore, we don't have to carefully check out his credentials."

EXAMINER REILLY: That is three times it is in the record, and precisely the same way, Mr. Kiel.

MR. JOHNSON: May counsel make a statement at this point, Mr. Examiner?

EXAMINER REILLY: Yes.

MR. JOHNSON: It is more in the nature of inquiry. I didn't hear any reference made by this witness to Auto Driveaway Company in his direct testimony, and I was here for all

APPENDIX 8/6

of it.

As long as it is expressly understood that these questions that Mr. Kiel is propounding to the witness are Mr. Kiel's idea of what may have transpired, I have no objections. But, otherwise, I do have an objection.

EXAMINER REILLY: I do not think that the witness knows anything about Auto Driveaway, and the only reason it came into the record is that it appears on some of these documents that have already been introduced. Sometimes there is Auto Driveaway and sometimes there is Driveaway Inc., and the witness stated he doesn't know anything about it.

MR. JOHNSON: After Mr. Kiel is finished, and before the witness leaves the stand, may I make a statement?

EXAMINER REILLY: Yes.

MR. KIEL: Let the record show that I have in my client's file, Mr. Examiner, an affidavit of Mr. Zola of Auto Driveaway, filed in the court proceeding in this matter, and it was based upon that information as well as what was in Exhibit 143, and the accident report, that prompted me to use that name specifically. I just didn't pick it out of the air.

EXAMINER REILLY: At this point in the game, we are not very much interested in what Mr. Zola has done or what affidavits he signed. We are interested in what the witness knows.

MR. KIEL: Except, Mr. Examiner, that the reasonableness of the practices of AAACON are in question, and I think part of the test is as to what is reasonableness and what other people do under similar circumstances.

EXAMINER REILLY: Since the witness doesn't know, there is no testing area, Mr. Kiel.

Q (By Mr. Kiel) Exhibit 147 is an affidavit, Mr. Rust, which has your name at the bottom of it. It refers to an attachment which is a letter which is referred to in the next to last paragraph on the first page as something being marked Exhibit A. I don't have it on my copy. Do you have a copy of it on yours?

A Let me see what you are referring to. Which section is this?

Q The next to the last paragraph on the first page.

MR. BROWNING: No, there is no copy of it here, unless he has a copy of it that is attached to his own personal copy.

EXAMINER REILLY: I think it is the next to last paragraph on the first page.

MR. KIEL: On the first page.

"That shortly thereafter, he received a letter identical to that hereto attached marked Exhibit A."

A The implication is that I received in the mail those three things that I stated, that is, an advertising brochure and the owner's--what is it--freight bill, and the other freight bill. Those are the parts of the letter.

Q There is no Exhibit A, however, attached to 147?

A No, there is no Exhibit A.

Q On the last page there is a reference to Exhibit B. Will you agree with me also that there is none attached to any of the documents that you sponsor here?

A The Consumer Affairs Exhibit B. No, it is not attached.

Q What information do you have with respect to a hearing being held by the Department of Consumer Affairs in New York State?

A Well, I heard over the same CBS radio you did when you were shaving the same advertisement.

MR. SARSHIK: Did you say New York State or New York City?

MR. KIEL: I said New York State. It says what it says on the document. I am reading from the document. Would the witness go on?

Q You heard something on the CBS radio?

A Yes, that the New York City, it should have been, if this was State on here, Consumer Affairs was interested in the case. The details are in their news release. I heard this, was curious about what was going on since I had been involved in this, and this case was coming up in North Carolina and I requested further information. The news release was sent to me.

Q Had you believed when you made this affidavit that the Department of Consumer Affairs was holding some kind of hearings, and is that why you said that in your affidavit?

A They were interested in the case.

Q You said they were going to hold hearings, the hearings being held by the Department of Consumer Affairs.

A The information in there is basically information that was in the news release.

Q Didn't you give this as an exhibit, 147, as an affidavit in which you said that you had obtained information that the Department of Consumer Affairs was holding a hearing?

A It says that in January, 1972, I obtained information regarding hearings being held.

Q By the Department of Consumer Affairs?

A I heard information regarding it, yes.

Q Did you understand that they were holding hearings?

A Not at that time, no.

Q But you put it in an affidavit, that that's what you understood?

A Regarding the hearings?

Q Being held by the Department of Consumer Affairs?

A Okay, technically that's true.

Q Was that the implication of the press release in the news broadcast that you heard on the radio?

MR. SARSHIK: Objection. That is going clearly beyond the scope of the examination.

MR. KIEL: Counsel wasn't here at the beginning of the hearing. The rules, as I understand them, were that one attorney would put on a witness and that he would object to the cross examination if there was such objection.

EXAMINER REILLY: He can object as far as his interest is concerned in this proceeding. He is representing the Department of Consumer Affairs of the City of New York. However, I am overruling his objection.

MR. KIEL: Would the reporter give us the question, please?

EXAMINER REILLY: I think, Mr. Kiel, to shorten it up, I don't know what you are trying to get at, frankly, but he has there with him--as I understand it, he has the press release.

THE WITNESS: Yes.

EXAMINER REILLY: Are you trying to contradict what is in the press release?

MR. KIEL: I am only trying to find out what information this witness had which caused him to give an affidavit in court proceedings which is partially--

EXAMINER REILLY: I think we have cleared that up. I think there was some confusion in the witness' mind. What he wrote in the affidavit is perfectly clear.

Q (By Mr. Kiel) Did you make available to the Bureau of Enforcement a copy of the check in payment of your claim when they interviewed you?

A You mean the $140?

Q The $100 check.

A I showed it to them, yes.

Q Did they ask to copy it?

A It was uncopyable in the form that I had because it is a copy itself and it doesn't come off.

Q Are you appearing here under subpoena?

A Yes, I am.

Q When were you subpoenaed?

MR. BROWNING: I object. That is immaterial, irrelevant and beyond the scope of direct examination.

EXAMINER REILLY: I am going to let him answer it, Mr. Browning.

A Let me find the subpoena. It is dated March 1st, 1972.

Q You were served on or about March the 1st?

A I received this, yes.

MR. BROWNING: That is the first time I was aware that the--

EXAMINER REILLY: This is sand against the tide, Mr. Browning, and I don't know why you brought it up, and I overruled your objection simply in the area of time. I thought I was going to save some time.

Q Did you see the affidavit of your attorney, Harry Dumont which is Exhibit 146, when he indicated in the second paragraph on the first page that Mr. Beck had been released from the County Jail in North Carolina in order to go to Miami for personal reasons and he didn't return?

A Mr. Dument sent me the information, yes, and I did read that.

Q Do you feel that the Sheriff having this prisoner in custody could also have investigated further, the way you said AAACON could have, to find out what kind of a person was involved here?

MR. BROWNING: I submit that is irrelevant and immaterial.

EXAMINER REILLY: This is getting far afield.

MR. BROWNING: How would he ever know that, anyway? Not the Sheriff, the witness.

MR. KIEL: I have no further questions of this witness.

REDIRECT EXAMINATION

Q (By Mr. Browning) Mr. Rust, did you call me in connection with your experience with AAACON at any time?

A Yes, I did.

Q When was that, do you recall it?

A Shortly after I heard the news release. I think it was the same day, in fact, that I heard it.

Q Incidentally, concerning that news release that you have testified about on cross examination, do you have a copy of it there?

A Yes, I do have a copy.

MR. BROWNING: We can just mark this for identification

BEST COPY AVAILABLE

at this point, a two-page document which is the news release about which the witness has testified.

EXAMINER REILLY: Marked for identification as Exhibit 149.

(Exhibit 149 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit 149 and ask you to state whether or not that is a true and accurate copy of the copy that you have in your possession?

A Yes, it appears to be so.

Q Now, that is what you were referring to in your affidavit--

MR. KIEL: Objection. It is a leading question.

Q Look at your affidavit, sir, which is Exhibit No. 147. What were you referring to in your affidavit as Exhibit B?

A That is the information that I was referring to.

Q That press release?

A Yes, the press release.

Q Which has been identified as Exhibit No. 149, right?

A Yes.

Q This letter that you referred to as Exhibit A to the same affidavit, is it the letter that you received from your friend?

MR. KIEL: Objection. Mr. Examiner, that is as good as telling the witness the answer. I submit that is improper examination.

Q What were you referring to there, sir?

A I was referring to the AAACON Auto Transport brochure, which is the letter.

Q And that's Exhibit 133, is it not?

A Yes.

Q Is that exhibit A?

A Right, that's Exhibit A, and the other is Exhibit B.

Q About that check that you received from AAACON for $100, would you dig it out, please?

A Yes, sir.

Q Is that a check from AAACON?

A It's from the Trip Fund of North America, from Manufacturers Hanover Trust Company.

Q Can you read who signed the check?

A No, I can't.

Q How do you know that came from AAACON?

A Well, the basic information for that is their stamp on the back.

Q They have a stamp on back?

A There is a stamp on the back which says, "In full settlement for all claims of AAACON Auto Transport," and I thought something might be funny there, so I crossed out, "for all claims," and I wrote--I crossed out, "for all claims," and I wrote in, "for $100 deductible auto insurance," on this.

Q You stated on cross examination that AAACON was trying to get out of the North Carolina action. Do you have anything in your possession--

MR. KIEL: There is no such testimony. I object.

EXAMINER REILLY: There is. You filed a document in the court asking that you be released from the case.

Go ahead, Mr. Browning. I am going to let him ask the question.

MR. KIEL: May I make the objection for the record?

EXAMINER REILLY: Yes.

MR. KIEL: That there is a substantial difference in the language used by Mr. Browning and the legal procedures followed in the litigation.

EXAMINER REILLY: I know that, Mr. Kiel. I have been a lawyer for thirty-seven years. Once in awhile I understand the difference between legal terminology and lay terminology.

Q Do you have anything in your possession from your attorney that would indicate that AAACON was, in your words, trying to get out of the lawsuit?

A Yes, I have this affidavit that was written by Mr. Ralph Zola, sworn to by Ralph J. Zola.

MR. BROWNING: I would like to have it marked for identification, Mr. Examiner, a two-page document being the affidavit of Ralph J. Zola.

EXAMINER REILLY: Marked for identification as Exhibit

150.

(Exhibit 150 was marked for identification.)

MR. KIEL: I object to this method of conducting an examination. This is properly direct examination and it was not put in in direct examination. I submit it is beyond the scope of cross examination and it is improper redirect.

MR. BROWNING: He opened the door. He mentioned it and we got into it, so--

EXAMINER REILLY: I agree. The exhibit is marked, and you may question on the document if you desire.

Q Mr. Rust, will you look, please, at what has been marked for identification as Exhibit No. 150. I ask you to state whether or not that is a true and accurate copy of the copy of the affidavit of Ralph Zola that you received from your attorney, Mr. Dumont, in connection with the lawsuit in North Carolina.

A Yes, it is.

Q Do you have anything else in your possession in regard to that action of AAACON?

A He sent me a copy from them and the freight bill, an order form and the bill of lading, a copy of the bill of lading. So, rather than two pieces of paper, I have four, but they have already been introduced as evidence, at least my copies have been introduced as evidence.

MR. BROWNING: Those are all the questions I have.

RECROSS EXAMINATION

Q (By Mr. Kiel) Would you look at Exhibit 150 and show me any word in that exhibit which reflects a statement to the effect that AAACON requests to be relieved of legal responsibility, from Exhibit 150?

MR. BROWNING: Mr. Examiner, it says what it says, I submit, and that is an improper question.

MR. KIEL: Mr. Examiner, I agree, and that is the point I am making. We are not being prosecuted by Mr. Browning. We are being prosecuted by Mr. Browning. We are being persecuted.

This exhibit, I could not imagine what terrible things we are going to find in this paper, and I think if you should read this record,--

EXAMINER REILLY: Wait a minute. Are you denying the authenticity of this?

MR. KIEL: No, what counsel said, that's what I am objecting to. This was introduced as a paper which would show that AAACON was trying to be absolved of certain responsibilities in certain litigation, and this was the paper that was going to show it.

EXAMINER REILLY: Wait a minute. Did AAACON attempt to have themselves removed from this proceeding, and was this an affidavit in support of whatever your pleading was?

MR. KIEL: I don't know, Mr. Examiner.

EXAMINER REILLY: Then why are you making these wild statements?

MR. KIEL: Because this was the paper that Mr. Browning offered and had marked to show that this was an affidavit by Mr. Zola which indicates that they were attempting to be--to receive a summary judgment in their favor in this proceeding.

Now, certainly, whether or not--

EXAMINER REILLY: We will settle this another way. I will not receive this when it is offered. One of the Zolas, or, if necessary, we will put whoever the affiant is on this on the stand, and we will find out if this is part of a record.

MR. KIEL: Mr. Zola will testify.

EXAMINER REILLY: I don't want these charges of persecution made and then when I ask you a question you don't know the answer to the proper question.

Q (By Mr. Kiel) Mr. Witness, do you have information with respect to the authenticity of the data contained in Exhibit 149?

A This was just a news release that was sent to me.

Q You don't know whether what is in here is true or not, do you?

A I have no hard data on it.

MR. KIEL: I have nothing further of this witness.

MR. BROWNING: I would like to ask one or two additional questions in connection with this lawsuit in North Carolina, if I am permitted.

EXAMINER REILLY: Wait a minute, Mr. Browning. Before you go ahead, do you have a copy of the pleading that was filed?

MR. BROWNING: That is what I am getting at. I think maybe the witness does have, and I think he has some communication from his attorney. That is one of the reasons I asked another question there originally and he didn't, I think, understand my question.

EXAMINER REILLY: All right.

THE WITNESS: What is the question?

Q (By Mr. Browning) Do you have any communication from your attorney?

A I have several.

Q Concerning AAACON'S action in the North Carolina suit?

MR. KIEL: If Your Honor, please, I am going to object.

EXAMINER REILLY: No, you are not. You may object.

MR. KIEL: May I please have my objection? I object in this record to the description of litigation which is in court and where parties are attempting to preserve their rights as they see them, and their counsel and attorneys are trying to do the same.

There should be no implications drawn from any legal acts in a lawsuit, at least by this Commission. They should not attempt and they never have attempted to judge the wisdom, the lack of wisdom, the propriety of a legal determination.

I can see no reason to fill this record with legal steps and documents--

EXAMINER REILLY: We are not filling the record with any legal steps. We are simply trying to determine if a pleading was filed in the North Carolina Courts to have AAACON removed as a party defendant in the suit. That's all. This has nothing to do with the merits of the case.

THE WITNESS: I do have information from my lawyer dated March 9th to Mr. Browning and to myself, and I don't know--I have a copy directly from him. I could read information out of it of how--let me read part of it.

MR. KIEL: I object, Mr. Examiner.

EXAMINER REILLY: If it relates to the filing of the pleading, you may read it, Mr. Witness.

Let Mr. Kiel see it. Give Mr. Kiel a copy of it.

MR. BROWNING: Or mark it for identification.

EXAMINER REILLY: Mark it for identification as Exhibit 151.

(Exhibit 151 was marked for identification.)

EXAMINER REILLY: There is no pending question. Since the document itself has been marked for identification, there is no need for him to read from the letter.

MR. BROWNING: I was going to ask the witness if that is a true copy of what he has in his possession, Mr. Examiner. That is my last question.

EXAMINER REILLY: Is that a true copy?

THE WITNESS: Did you give me a copy?

EXAMINER REILLY: Yes.

THE WITNESS: Yes, it is true to the point where Dumont did not sign mine. He did not sign my copy.

Q Do you have any other communication from Dumont in connection with that lawsuit as to AAACON'S actions? Is there anything else that you have in your possession, either a telephone call or letter?

A The last information that I have on it was that it was still pending, and this is all that I know at this time.

MR. BROWNING: That is all I have, Mr. Hearing Examiner.

Q (By Mr. Kiel) Mr. Witness, did you have any information as to the basis for the alleged motion for summary judgment?

A You mean from whence it came?

Q No. Why? What was the basis for it?

A I don't know. I only heard this motion was made.

Q Do you know it was made by attorney who represented the insurance company of AAACON?

A No. Other than this information in this letter--I mean, I know from this letter and from information my lawyer communicated to me. Personal knowledge, no.

Q The person you call your lawyer started off initially as your insurance company's attorney?

A Obviously. I am a defendant and somebody has to take me

Q Wouldn't it be reasonable for you to assume that if your insurance company retained an attorney insofar as their interest was concerned.

MR. BROWNING: Objection.

EXAMINER REILLY: I am sure the witness doesn't know the import of the question. I am going to sustain the objection.

MR. KIEL: I have nothing else.

EXAMINER REILLY: The witness may be excused.

MR. BROWNING: I move the admission of Exhibits 132 through 151, Mr. Examiner.

MR. KIEL: I have certain objections, if I might be heard.

EXAMINER REILLY: Go ahead.

MR. KIEL: With respect to Exhibit 133, I object to its admission. It is not material or relevant in this proceeding.

EXAMINER REILLY: Wait a minute, wait a minute, wait a minute.

MR. BROWNING: 133 is the ad.

MR. KIEL: It is a letter to Mr. Carlyle.

EXAMINER REILLY: Something is wrong with the numbering here. That isn't 133. 133 is your brochure. Oh, I am sorry, it was sent to Mr. Carlyle. The witness testified that it was similar to the document that he received and he only testified as to portions of it. Those portions he testified to are still contained in this, and I am going to receive 133.

MR. KIEL: With respect to Exhibit 147, I object to its receipt inasmuch as it is incomplete.

MR. BROWNING: Mr. Examiner, that was explained by the witness, why it was incomplete.

EXAMINER REILLY: There is enough explanation in the record. The exhibit is received.

MR. KIEL: I object, that 146 is an affidavit of Mr. Rust's attorney and contains information that Mr. Rust is not familiar with.

MR. BROWNING: Mr. Examiner, that came to me in the course of the lawsuit in North Carolina.

EXAMINER REILLY: I am going to receive 146.

MR. KIEL: I object, Mr. Examiner, to Exhibit 149, which is the news release.

EXAMINER REILLY: Since you forced this into the record, I am going to receive it. That is not the only reason. It is an exhibit that would be received, in any event.

MR. KIEL: I object next, Mr. Examiner, to Exhibit 150 for the reasons previously indicated.

MR. BROWNING: Again, this is a matter that came to Mr. Rust's attention through his attorney in connection with a lawsuit in North Carolina.

EXAMINER REILLY: I am going to receive 150.

MR. KIEL: I object to Exhibit 151.

EXAMINER REILLY: Exhibit 151 is received.

MR. BROWNING: Mr. Examiner, have you received all the exhibits?

EXAMINER REILLY: Not yet. I am waiting for him to finish.

MR. KIEL: I have nothing else.

EXAMINER REILLY: Exhibits 132 through 151 are received.

(Exhibits 132 through 151 were marked in evidence.)

MR. BROWNING: Thank you, sir.

I would like to call another witness, Mr. Tomany.

EXAMINER REILLY I think this witness has been previously sworn. He is still under oath.

MR. KIEL: May the record show I object to the further testimony of this witness, who is called and who the Examiner has excused.

EXAMINER REILLY: I can't make any ruling on that until I find where the testimony is going to proceed.

STEPHEN P. TOMANY

recalled as a witness, having been previously duly sworn, testified further as follows:

MR. BROWNING: I think for the purposes of the record, Mr. Examiner, I can develop a basic evidence which would qualify the witness to testify.

FURTHER REDIRECT EXAMINATION

Q (By Mr. Browning) Are you employed by the Interstate Commerce Commission?

A Yes, sir.

Q In what capacity?

A District supervisor.

Q Where are you employed by the Interstate Commerce Commission?

A Out of New York, 26 Federal Plaza, New York, N. Y.

Q Are you assigned to a territory?

A Yes, sir.

Q What territory are you assigned to?

A 42nd Street to the north end of Manhattan, Rockland and Westchester Counties.

Q Is AAACON a common carrier which is domiciled in your territory?

A Yes, sir.

Q Were you recently given an assignment in regard to the actions which were commenced by AAACON in the Manhattan County Court of New York?

A Yes, sir.

MR. KIEL: Objection unless it is brought down to a date that involved matters that occurred subsequent to his prior testimony.

EXAMINER REILLY: There is still nothing in the record that I can rule on. I don't know what you are talking about. You are objecting to nothing yet. He hasn't answered and I don't know what this is all about.

MR. KIEL: I am objecting to the form of the question, then, with respect to the general nature of it, as it might relate to information which Mr. Tomany might have gained before he testified previously and was excused from testifying further, as compared with information that he may have gained subsequent to his last appearance.

EXAMINER REILLY: Would you let me find out what is going to be the witness' testimony so I may rule on it?

Q What were you asked to do?

A I was asked to examine certain dockets on file in the Supreme Court, Manhattan County, New York.

Q Did you?

A Yes.

Q How many dockets did you examine and for what period of time?

A For the year 1971, I examined about 16 to 17 dockets, some were empty, which had no papers in them.

Q Did you determine the nature of the action which was taken by AAACON in connection with those dockets?

A These are all actions taken by AAACON ordering the staying of a suit which somebody had instituted against AAACON in another state or outside of the City of New York.

MR. KIEL: I move to strike. Again I repeat the objection with respect to this information. There is no reason why this information, if it was desired, shouldn't have been put in when the witness was called to testify.

EXAMINER REILLY: Are you finished?

MR. BROWNING: Mr. Examiner, all he is here to testify to is the fact that he examined certain documents over at the Manhattan County Court, and we will get the documents that he examined and the nature of the action that was taken by AAACON, which is a matter of record over in that court.

He examined documents himself in each of the docket numbers.

EXAMINER REILLY: Let him answer the question.

Q Do you have a list of the dockets with you that you examined and will you give them to us, please, by number?

A Yes, sir. I examined only the dockets for 1971, which were available by the County Clerk's office.

This is Docket No. 716, 713, 1840, 2395, 2396, 2548, 2810, 3472, 4259, 4411, 4297, 7202, 8399, 8374--

MR. KIEL: What was the next one after 7202, please?

THE WITNESS: After 7202, it should be 8399, 8374.

A 10850, 13298, 13961, 16503, 16504, 16924, 17376.

Q Do you know what the basis for these lawsuits by AAACON was?

MR. KIEL: Objection.

Q In each of the cases?

MR. KIEL: Objection. The record would speak for itself, and this witness hasn't been qualified.

MR. BROWNING: He examined the dockets, the papers.

EXAMINER REILLY: The witness may answer the question.

Q Do you know what the basis for the action by AAACON was?

A Yes.

Q What was it?

A These were orders or petitions by AAACON staying persons or companies who instigated suit in foreign states from continuing that suit in accordance with the bill of lading which stated that these cases had to go to arbitration in New York City.

Q Mr. Tomany, are you aware of any recent attempt by AAACON to revise its tariff?

A Yes, sir.

Q How are you aware of that attempt?

A A letter dated June 15th, 1971, passed over my desk, which was the district file. It was addressed to Mr. Irving Zola as president of AAACON, and this letter rejected a tariff which AAACON had filed with the Commission.

MR. BROWNING: Mr. Examiner, I would like to have marked for identification a multi-page document being the letter and the attachments to that letter to which the witness has just referred.

MR. KIEL: Mr. Examiner, I move to strike that testimony as it relates to matters which occurred prior to the last testimony of this witness, and, at that time if it was intended that this should be dealt with, it should have been done then and not now.

MR. BROWNING: Mr. Examiner, the order presentation of my case is my business.

EXAMINER REILLY: Your objection is overruled.

Marked as Exhibit 152 for identification.

(Exhibit 152 was marked for identification.)

Q I hand you what has been marked for identification as Exhibit 152 and ask you to state whether or not that is a true and accurate copy of the document you received and now is on file with the Interstate Commerce Commission here in New York City?

A Yes, this is a copy of a letter with attachments written by James A. McCarthy, chief section of tariffs, Interstate Commerce Commission.

Q Was that not an attempt by AAACON to file with the Commission their bill of lading which they are currently using in connection with driveaway?

MR. KIEL: May I have that question repeated?

MR. BROWNING: I will restate the question. I will withdraw the question and I have no further questions of this witness, Mr. Examiner.

RECROSS EXAMINATION

Q (By Mr. Kiel) Mr. Tomany, when did you examine these various dockets which numbers you read into the record?

A March 9th, I believe.

Q 1972?

A Yes, sir.

Q Did you do it at counsel's request?

A No, my superior's.

Q That is Mr. Lorusso?

A Yes.

Q Did you examine all of the papers in these dockets?

A No, sir.

Q What did you examine in the docket?

A To each docket there is attached a synopsis, and I read that.

Q And the synopsis said a petition had been filed by AAACON?

A Yes, sir.

Q Did you read and see what the petition said orwhat were the bases for the petition?

A On some of them, I did, yes.

Q Which ones did you read, which cases?

A I don't remember.

Q Did you read the disposition of the petitions in the synopsis?

A Most of them were granted. Some were withdrawn. Some were granted upon default.

Q Do you know which ones were granted?

A No, sir.

Q Now, sir, when did you receive Exhibit 152?

A It was received in the New York office on June 23rd, 1971, so I got it a day or two later.

Q You knew about this communication when you testified last time?

MR. BROWNING: I object. That is irrelevant and immaterial.

EXAMINER REILLY: Sustained.

Q Did you read Exhibit 152?

A Yes, sir.

Q Did you read the fourth paragraph with respect to the reference to arbitration and the use of arbitration being, in the writer's opinion, contrary to the carrier's obligations?

A Yes, sir.

Q Did you read the decision of the Interstate Commerce Commission at 340-ICC 516, where the Commission says, and I quote, "We should make it known here, however, that we foresee no insurmountable barriers to arbitration being employed in those situations in which shippers and carriers mutually agree prior to the institution of a transportation service to utilize this device to resolve loss and damage claims disputes cognizable under Section 2011 of the Act or corresponding sections of Parts 2 or 4 thereof.

"It is our view that when claims are not voluntarily paid by carriers, the use of arbitration by the parties rather than resort to a court of law, is not proscribed, by any portion of the Interstate Commerce Commission Act."

Did you read that?

A No, sir.

Q Do you have any opinion whether the comments of Mr. McCarthy contained in Exhibit 152, rather than the decision of the Commission, that I read part of, would be correct as to the substance of law applicable?

MR. BROWNING: Mr. Examiner, I submit, that is an improper question. This witness couldn't possibly answer that question. It is taken out of context in that Mr. Kiel said, "Where the shipper and the carrier mutually agree," and that certainly isn't true in all cases that we have heard so far.

The witnesses didn't know what they agreed to. So, I submit, it is an improper question.

MR. KIEL: I think counsel's characterization of what people knew or what they didn't know, what they agreed to do or what they didn't agree to is a question of law.

MR. BROWNING: Most of them didn't even look at them.

MR. KIEL: That may be. The fact is, when you sign a paper, which is a contract, and you don't read it, there are certain legal implications that the courts draw from it and, I submit, that was an improper rebuttal to my question and counsel's objection.

EXAMINER REILLY: I don't think the witness is in any position to answer the question, in any event.

The objection is sustained.

Q Mr. Tomany, do you have the notes that you made with respect to each of these dockets and the conclusions that you found in them?

A Yes, sir.

Q May I see those notes, please?

MR. KIEL: May I just have a few moments to look the notes over, please?

MR. BROWNING: Let the record show I have offered the notes, which Mr. Kiel just requested to Mr. Kiel, please, Mr. Examiner.

MR. KIEL: I am prepared, Mr. Examiner. May I approach the witness with the notes? I have some difficulty, I must admit, reading your handwriting.

Q Would you read the sixth line as it refers to Docket No. 716?

A AAACON is the petitioner and Gale Ann Yoder, now Gale

Yoder Barauch, order staying respondent from proceeding in an action pending in the State of Michigan pursuant to Rule 7503 C.P.L.R. until arbitration in accordance with the terms of contract between the parties hereto is granted upon default, settle order.

Q Was that the summons that you read? Was that the synopsis on the cover of the docket that you have just referred to?

A Yes, sir. Of course, there were certain other things on there, the justices' name and things like that.

Q I refer you to 1340 and 2395. There is nothing on your note to indicate what action, if any, was shown on the docket Will you read that?

A The order was stayed.

Q Where do you see that?

A Well, if I didn't put it down, I know it was. If it was withdrawn, I put withdrawn.

Q I refer you to 13961. Would you read the material that you have down in your notes?

A 13--

Q 13961, here, this information.

A AAACON Auto Transport against East Side Transporter, Inc., dated 3/3/72, Section 2011 does not apply, State's respondent, "Tariff, Section 2(c), force arbitration."

Q What does that mean, arbitration was granted by the court?

A Yes, sir.

Q Mr. Tomany, as far as you are concerned, do you know of any impediment why parties agreeing to arbitration should not be required to arbitrate?

A I believe most of the parties who disagree in this arbitration, disagree to arbitration in New York, New York when they are out in California, Wisconsin or Minnesota.

Q You don't think they disagree to arbitration, just that they disagree to arbitration in New York?

A My personal opinion is that they disagree to arbitration in New York and they can't bear the expense of coming into New York,--

Q Is it your understanding--

A --to argue a two or three hundred dollar claim.

Q Do you have any information upon which you base your conclusion that they have to come into New York to argue a claim in an arbitration claim?

A That they have to come?

Q That they have to come to New York.

A Arbitration in New York, New York.

Q Arbitration in New York and coming to New York are two different things, aren't they?

A They have to hire an attorney otherwise.

Q Haven't you read this decision in 340-ICC, where the Commission recognizes that the arbitration is desirable because the parties don't have to come anywhere, they can submit it on documents and they don't have to hire attorneys and the proceedings are handled procedurally?

EXAMINER REILLY: Mr. Kiel, you have gone through that and I have already stated that this witness is in no position to answer that kind of question.

MR. KIEL: I asked him if he read a decision regarding this kind of information.

MR. BROWNING: You can argue that in a brief.

EXAMINER REILLY: I guess I am not going to give a lecture about what is not in the decision with respect to arbitration. You can't take a paragraph out of a decision and apply it to all conditions relating to arbitration.

MR. JOHNSON: May I ask a question, Mr. Examiner?

EXAMINER REILLY: Yes.

MR. JOHNSON: Is that a recent decision?

EXAMINER REILLY: I can't tell. It is three forty.

MR. JOHNSON: Could I have a service date on that?

MR. KIEL: February 24th, 1972.

MR. JOHNSON: Is that administratively filed?

MR. KIEL: Some of the provisions became effective today, and I hope your client knows about it.

MR. JOHNSON: I appreciate your concern.

MR. KIEL: It's all right.

Q Mr. Tomany, have you read this decision as it relates to arbitration?

A Mr. Kiel, I believe I answered it before.

Q I am sorry, if you did I didn't hear you. Did you read the decision?

A I said no.

Q Thank you.

MR. KIEL: I have nothing else.

MR. BROWNING: I have nothing.

EXAMINER REILLY: The witness may be excused.

THE WITNESS: Thank you, sir.

MR. KIEL: Mr. Examiner, may I move to strike this testimony consistent with my prior objection?

MR. BROWNING: I move the admission of the documents, I move the admissions of 152.

EXAMINER REILLY: I assume you object to that for the same reasons, and I overruled your objection.

I receive 152 and I overrule your objection also to the prior testimony.

(Exhibit 152 was received in evidence.)

EXAMINER REILLY: We will take a ten minute recess.

(Recess taken.)

EXAMINER REILLY: The hearing will be in order.

MR. BROWNING: Mr. Examiner, I have one more witness.

EXAMINER REILLY: Let's take him.

MR. BROWNING: Mr. Trecartin.

JOHN E. TRECARTIN

called as a witness, having been first duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Browning) Mr. Trecartin, what is your address in New York City?

A 122 East 42nd Street.

Q Are you a professional man?

A I'm an attorney at law.

Q Do you represent any client in connection with AAACON?

A Yes, Unigard Insurance Group

Q Have you any experience in connection with any matters on behalf of your client in which AAACON was involved?

A Yes.

Q What was that, sir?

A We insured an automobile owned by a family known as Boldt--

MR. KIEL: Mr. Examiner, I would like at this point to note that, to the best of my knowledge, there has been no prior notice to us in this docket with respect to a Boldt matter. This notice was given to us in Exhibit No. 2, and Mr. Browning subsequently notified me with respect to Mr. Rust as being the witness he would call here today.

There is no notice with respect to Boldt, and I am not prepared with respect to that, and I submit that we are entitled to notice under the Administrative Procedure Act, and I ask that the witness be excused and be required to come back at some later date this week, perhaps, so that we can get our files and papers and prepare ourselves.

MR. BROWNING: Mr. Examiner, I will sponsor as a counsel's Exhibit my letter to Mr. Kiel of February 25th, 1972, which he just referred to, and in the last paragraph of which I remind Mr. Kiel, as I have in all my letters all along, that if we received any additional evidence that bears on issues that have been already raised in this proceeding, which this witness' testimony will, we will offer that into evidence at this continued hearing, and I do offer that letter at this time to Mr. Kiel as a Counsel's Exhibit.

His testimony will relate to arbitration, which is what we are talking about here this afternoon, and I submit that they don't need any prior notice of this.

This involves matters that they have been in litigation with.

MR. KIEL: What I am saying, Mr. Examiner, is that we have had no opportunity properly to prepare ourselves for this. All of the witnesses that have been called have been listed and have given the particular cases with our bills of lading numbers so we can check the file. In order that I may have an opportunity properly to protect my client, I should have an opportunity in advance to know that such a witness is going to be called and to have my files and have a chance to study them.

And, in fact, perhaps if we had even had the information this morning, if we could have gotten out of the building, at least we could have gotten the file.

MR. BROWNING: I can understand his--

EXAMINER REILLY: I am going to permit the witness to testify subject to a motion to strike at the conclusion of his testimony or to excuse him temporarily for the purpose of giving counsel an opportunity to study for cross examination. And, obviously, if I move to strike, he will be excused permanently.

MR. BROWNING: All right.

I have forgotten where we are now.

A (Continuing) We were asked to represent the Unigard Insurance Company in a matter involving an insured of theirs by the name of Boldt. The family resided in the State of Oregon and was in the Los Angeles area and he is a golfer, as I understand, and he was to go to a tournament in Florida, so he signed one of the usual contracts, bills of lading, however you would call it, with AAACON, retained AAACON, and thereafter AAACON took his car, and before it left the Los Angeles city limits it was damaged, looted and abandoned.

He retained attorneys in California to institute an action out there, and included in the claim at that time there was a subrogation claim paid by Unigard for the damage to the Boldt automobile approximately $1,200.

Once the suit was instituted there, AAACON came into the New York State Courts, and in a proceeding in the State Court under Index No. 16760 of 1969, first by mail service on Boldt, instituted an order to show cause for a contempt citation, putting the matter into arbitration under the clause of the agreement.

The Boldts did not appear or contest it, and it was subsequently reduced to a contempt citation of $100 a day, which is now 12, $15,000 worth of judgment.

Thereafter, they served by mail on the Albany office of Unigard another order to show cause to force Unigard to withdraw the action in California, contending they had control of the action in California, and to force them into arbitration before the American Arbitration Association on 51st Street, I believe, under the clause of the bill of lading and the contract.

And I then undertook a series of defenses to these actions, every turn of the screw. We are back to court again. My file is, as you can see, replete with motion after motion, and eventually the California action was reduced to judgment on the grounds of fraudulent inducement, punitive and real damages, and I was ordered by the State Courts here under the threat of contempt to withdraw the $1,200 subrogation claim in the California action, and while that motion is pending in the State Court here, after a series of motions and orders, then Zola & Zola and AAACON go into the Federal Court before Judge Tyler for the same relief, and counsel sitting there represented them in the Federal action, and Judge Tyler issued the same order.

So, this is a series of about a dozen or more court proceedings on a total claim involving $1,200. Under these circumstances, and after Judge Tyler ordered arbitration, I put the matter into arbitration for the $1,200 here in New York--incidentally, paying a $50 fee at the same time.

Thereafter, once it was put into arbitration, AAACON then goes back into the State Court--this is the latest maneuver--they went back into a State Court to force me out of arbitration, contending that my moneys should be derived solely from the proceeds of the California judgment of some $5,000.

Incidentally, the Zola & Zola firm went to California to defend all aspects of the case, so it isn't new to them. But this is the latest move is the series, and this was denied in January, the relief was denied, and I just got a copy of the order the other day, denied the removal from arbitration, so the matter now ends up, hopefully one of these days in arbitration.

But, the worth of the material in the file is about four or five times the actual interest that the Unigard Insurance Group has in the entire aspect of the case.

Q Are the Boldts under a contempt citation both in the Federal Court now as well as the State Court of New York?

A Yes.

Q Do you know the extent of the contempt in the Federal Court?

A There was no money specified because an order was never submitted to Judge Tyler. A proposed order was submitted. It was never followed up as far as his signature was concerned.

MR. KIEL: I am sorry, I didn't hear that answer. Will the reporter please read it?

(The record was read.)

A And the contempt moneys which were to be embodied in the offer as well as attorneys' fees for Zola & Zola for having to bring the action in the Federal Court were left to Judge Tyler's discretion, left blank in the proposed order, but to date it has not been signed.

MR. BROWNING: Those are all the questions I have of the witness, Mr. Examiner.

MR. KIEL: Mr. Examiner, first I move to strike the testimony.

EXAMINER REILLY: I am not going to strike it.

MR. KIEL: Then I ask that this witness be asked to return tomorrow.

EXAMINER REILLY: I am not going to permit that, either. This is all material. I have heard nothing that you or one or both of the Zolas should not be prepared to cross examine this witness on.

MR. KIEL: Mr. Examiner, I don't know anything about this matter. I didn't hear anything about it until fifteen minutes ago, and, I submit, that I will not be properly able to defend the interest of my clients under the circumstances without the proper notices required by the Administrative Procedure Act.

EXAMINER REILLY: You have sitting beside you two counsel duly entered in this proceeding as counsel of record. The evidence is they did follow this matter very closely, went out to California, participated in a legal proceeding out there. They know all of the matters that the witness has testified to, and I am sure they know them very intimately. One or another of them should be prepared to cross examine this witness.

MR. BROWNING: Mr. Examiner, furthermore, I believe Mr. Trecartin is committed to a court trial.

Is that right, sir, tomorrow?

THE WITNESS: Yes.

MR. BROWNING: And he just came in today. I had no advanced notice that he was coming in. We had talked briefly about it on Friday, which was the first time I have talked to Mr. Trecartin, and he indicated then that he was going to be involved in a court proceeding on Monday, but he would try to come in if he could.

MR. KIEL: Mr. Examiner, let the record show that I have no choice but to indicate for the record that I am not prepared, and I have--let the record show that I have been the one that has been responsible for this defense, and in view--

EXAMINER REILLY: Wait a minute, wait a minute. I don't want that. When these people entered their appearance, they entered their appearanbe generally and for all purposes.

MR. KIEL: May I finish, Mr. Examiner?

And, in view of those circumstances, I am going to ask Mr. Ralph Zola to take over the examination of this witness without waiver of my objections that I have made previously.

EXAMINER REILLY: All right.

MR. R. ZOLA: I would like the record at this time to show--and I do not have any documents with which to cross examine this witness--let the record show that the Hearing Examiner has ruled on prior occasions in this matter that only one attorney could represent AAACON Auto Transport, Inc. and the interest of that company, and of Auto Trip USA.

EXAMINER REILLY: You have misrepresented what the Examiner's ruling is. You may examine a witness with respect to one counsel only.

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MR. R. ZOLA: Sir, I believe the record will show what it shows.

CROSS EXAMINATION

Q (By Mr. R. Zola) Mr. Trecartin, you stated that a bill of lading agreement was signed by Mr. Boldt?

A Mrs. Boldt.

Q Mrs. Boldt. And do you know when that was signed by her?

A March 9th, 1969.

Q Would you tell us the number of that bill of lading agreement?

A If you could find it--here is a copy of it.

MR. R. ZOLA: Let the record show that the copy tendered to me does not have a number on it.

THE WITNESS: That has now been incorporated into a judgment in the State of California, so I don't think there would be any dispute to it. He denied it--

MR. R. ZOLA: I think that you can just answer the questions put to you.

THE WITNESS: Thank you.

MR. R. ZOLA: I move that any additional statement by him be stricken, Your Honor.

EXAMINER REILLY: We will strike that response.

Q Mr. Trecartin, do you know how service of process was effected or allegedly effected against AAACON Auto Transport, Inc. by the Boldts in the California action?

A I do not.

Q Sir, do you know whether or not the original action by the Boldts in California encompassed the subrogation interest of Unigard Insurance Group?

A Originally there was an action for property damage, yes.

Q And that would have included the--

A No.

Q I see. What was the original action for property damage?

A By the Boldts in their own name. Included among the other causes of action was one for property damage to their automobile.

Q And that would be the same property damage as is the subrogation interest of Unigard?

A Correct.

Q Did Unigard Insurance Company ever give AAACON Auto Transport a notice of their subrogation interest in this matter prior to the commencement of the action by the Boldts in California?

A I believe so.

Q Do you have a copy of the with you?

A I do not, no.

Q Do you know when the Boldts were paid by Unigard Insurance Company for the claim in question?

A June 13th of 1969.

Q Do you know the date of the commencement of the action in California by the Boldts?

A I do not, no.

Q Would it be after June 13th, 1969?

A I would have no way of knowing. Correct that. That was just a proof of loss in June. The actual check and payment was July 7th, 1969.

Q May I see that proof of loss, please?

A Yes.

Q Do you have a copy of the check given by Unigard by the Boldts?

A Payment was made to the garage that did the repairs. It wasn't directed to the Boldts.

Q Would you have a copy of the back of the check?

A No, no. You have all this information in your office file, I am sure.

Q Unfortunately, I don't have that with me.

A All right.

Q Mr. Trecartin, is it not so that on this automobile proof of loss the final sentence is, "The company," meaning Unigard, "is subrogated to all rights of recovery therefore, rating the amount paid against any person or organization and the insured agrees to cooperate fully in the prosecution of such rights."

A I read well. It's correct. Of course, under California law, that's just an agreement. This is to be determined--

Q Just answer the question.

EXAMINER REILLY: The witness may explain.

A Under California law, the rights do not go to the company itself. It's a cooperation, it's a loan agreement type of relationship.

Q That's what I wanted to get to. A loan agreement, would you explain that a little further?

A Yes. The insured gives the company the right to bring the action in his own name. He agrees to cooperate in the prosecution of it.

Q It's more than that, isn't it? The insured's company, in fact, legally, technically lends the amount of the settlement they make to the insured, isn't that correct, so the amount can be recovered in the event subrogation recovery against third party is made?

A Mr. Zola, that's what you have been maintaining for two years in and out of court.

Q Would you answer?

A The answer is no. It has already been decided in California contrary to you.

Q You are not answering my question.

EXAMINER REILLY: Yes. I heard him say no.

Q Would you tell us the nature of the loan agreement made between Unigard Insurance Company and the Boldts?

A It gives the company the right to bring the action in the name of the insured.

Q Under what circumstances would the loan be repaid?

A That he cooperate with the company on the prosecution of the action.

Q If he cooperated and the company lost, he would still have to repay the loan, or only if the company collected?

A No. He has already gotten his money. He doesn't have to pay it back.

Q If Mr. Boldt was successful in a claim against AAACON, would the company not under the loan agreement seek to recover the amount paid to Mr. Boldt?

A In your last motion in the State Court, you claimed that, and it's ruled against you.

Q Would you answer the question yes or no?

A The answer is no.

Q Under what circumstances would be money be returned to Unigard Insurance Company that they had already paid to the Boldts?

A When they get a judgment against you in that amount for the damage to the Boldt car, the company gets it back.

Q In the action that the company brought in connection with the Boldts?

A The company did not bring the action.

Q You said under those circumstances they would get it back?

A It's speculative.

MR. BROWNING: He already testified that the Boldts brought the action.

MR. R. ZOLA: There was also testimony that the insured has the right to bring the action in the name of the person with whom a loan agreement is made. I am simply trying to find out what the nature of this loan agreement is and whether or not, in fact, as is a common practice in New York and most other states of the Union, the money does return to the insurance company if collected by the insured or under the insured's name if the action is brought by an insurance company.

A It becomes academic here because it's no longer a part of the action in California.

Q Would you answer my question? Under a loan agreement, sir, does not the money that is paid to the insured come back to the insurance carrier in the event of recovery from third parties liable for the damage to the vehicle?

A Naturally.

Q Thank you. Sir, do you have a copy in your files of the action brought by the Boldts against AAACON Auto Transport in California?

A Certain portions, I do, yes. Here is the first amended complaint. I don't have the original complaint, that I know of. That is a portion of the complaint in the California action, yes. Here is an additional copy which is supplied by your office.

Q This will do. Thank you.

A I think this is a complete copy. I think that's the original complaint.

Q Thank you.

A That bears Mr. Aims' exhibit markings on it.

Q Sir, I show you page No. 3 of the original complaint and ask you if under paragraph 2 a cause of action is not alleged under Section 319 and 2011 of 49 U.S. Code, commonly known as the Interstate Commerce Act?

A It so reads.

Q Sir, I show you the amended complaint and ask you if paragraph 5 on page 3 states that at all times relevant, plaintiff, that is, Robert Boldt and Gail Boldt, were and are the lawful holders of said bill of lading?

A That is correct.

Q And they were suing in part for causes of action under the said bill of lading agreement, that is, they were suing on the contract which is the bill of lading?

A They were suing for fraud, as I understand it.

Q I want to read--

MR. BROWNING: I submit this is well beyond the scope of my direct examination, which related to actions in New York in the Federal Court and New York Supreme Court by AAACON to block this action out in California. I didn't get into that--into the action in California as such. I submit it is beyond the scope of the direct.

MR. R. ZOLA: The action in California has been characterized by the witness as an action for fraud. I maintain-

EXAMINER REILLY: All right, Mr. Zola, go ahead. I will let him answer the question.

A Whatever it says.

Q Just to save everybody's time, isn't it true that the second course of action was brought on the contract under the bill of lading agreement?

A That's right.

Q Now, sir, can you tell me what the nature of the fraud, alleged fraud was that you have been referring to as the course of action in California?

MR. BROWNING: I object because that is beyond of the direct examination.

EXAMINER REILLY: I think it is beyond the scope, but I think that it is just interwoven into the whole situation, the whole testimony of the witness, and I am going to let him answer the question.

A I am sorry, I didn't hear your ruling.

Q Answer the question.

EXAMINER REILLY: I overruled the objection of Mr. Browning.

Do you remember the question?

THE WITNESS: Yes.

A One of the counts was fraud.

Q Do you know the nature of the fraud count?

A Yes, I do. Judging from the court in the California term and certain affidavits submitted in connection with the action out there, I have gained some insight into the nature of the fraud. Do you wish me to go on into that?

Q No. I think we can refresh your recollection because I have found it on page 4 of the amended complaint.

Is it not true that paragraph 2 of the fourth cause of action of the amended complaint indicates that, as to the alleged defrauding, the defrauding by the defendants constitute--consisted of representing that the defendants constituted a single nation-wide organization representing that the San Francisco operation--

A I am listening.

Q If you read along, we can verify that it is all the same. --representing that the San Francisco operation of defendants is fully supervised by AAACON Auto Transport, Inc., representing that shipments are fully covered by a liability and property damage insurance which includes coverage for all deductible amounts and which is, in addition to consignor's own insurance, representing that claims arising from damaged goods will be handled and paid by the local office of defendants, and representing that the bill of lading presented to the consignor is in accordance with said representation.

Is that the total amount of the false allegations made in the amended complaint?

A I assume that's it, yes.

Q There was never a charge by the Boldts in the California action that there was any fraud in inducing the contract as opposed to these fraudulent misrepresentations?

A The jury found punitive damages and there is a judgment which encompasses the complaint.

Q Mr. Trecartin, I am referring to the complaint. There is nothing in there that refers to fraud.

MR. BROWNING: The witness has just stated that it apparently had been reduced to a judgment by the California Court which incorporates the complaint.

MR. R. ZOLA: Fine. Then, as long as we understand there is no additional fraudulent charge.

EXAMINER REILLY: We are talking only about this proceeding. Those were the charges that are made, and I assume that the judgment was based on charges made in the complaint, not something outside thereof.

Q Do you have a copy of that California judgment?

A Yes, sir, I believe I do.

MR. BROWNING: Since it is well beyond the scope of the direct examination and it is taking an enormous amount of time for this gentleman to go through this voluminous file, I think thiw question should not be answered.

MR. R. ZOLA: I haven't addressed myself to this question since you have overruled the objection, but I think we will be able to show in subsequent testimony by this witness that the question of fraud in the inducement was raised in the Federal Court proceeding, which ended up in a judgment, although the witness has stated to the contrary, and that this is part and parcel of the very issue before this Commission.

THE WITNESS: Apparently--I know I have correspondence covering it. Whether or not I have a copy of the judgment would take me a while to find out.

MR. R. ZOLA: We have some time. Please make sure you don't have it with you.

THE WITNESS: I am not sure. I have correspondence. I assume I do somewhere in the file.

I have a letter from the B-lcts' attorney in California.

Q (By Mr. R. Zola) May I see the letter?

A Certainly.

Q Mr. Trecartin, this letter of December 13, 1971, states that he presumes you will want a certified copy of the judgment. Did you ask him for one?

A Yes. It might have been sent. Here is another letter by the same attorney to the Attorney General of California indicating a successful completion of the fraud trial against AAACON, giving all the circumstances and background.

Q Mr. Trecartin, the letter you have handed me, I really haven't had a chance to read it carefully. Do you see anything in that letter about a fraud judgment or judgment on fraud? I haven't been--

A May I quote it?

Q No, sir. Is there anything on there with the word judgment for fraud?

A Right.

Q Where?

A The first sentence.

Q Is there anything in this letter about the decision of the Court or the language used?

A In the first sentence.

Q The decision of the Court or the language used?

A "Recently concluded a successful fraud trial."

Q You agree with me, then, so far--

A I am sure you have a copy of the judgment in your file. You represented AAACON.

Q No, I don't. Do you know, by the way--

A May I have the correspondence back?

Q Yes, when I am finished examining. I just want to hold on to it for a moment.

A Thank you.

Q Do you know, Mr. Trecartin, who from the firm of Zola & Zola was at the trial in California?

A I don't, no.

Q You don't?

A Not personally, no.

Q You don't?

A No.

Q How did you find out that one of the Zolas was out there at the trial?

A I think you told me when we met in the Federal Court.

Q When we met in the Federal Court, wasn't that before the trial, Mr. Trecartin?

A It was at one of the early trials. It was adjourned over, yes.

Q But the actual trial itself occurred after we met and I allegedly told you that I had been at the trial?

A I believe that's the substance of it. Deminimus non curat lex.

Q It depends on your viewpoint.

A Naturally.

Q Do you know the status of the California trial now?

A Yes, it's a judgment.

Q Do you know that it has been appealed?

A I don't know that. I assume you would. That's money out of your pocket.

Q Don't volunteer additional information. Mr. Trecartin, you didn't get a transcript of the trial, did you, by any chance?

A   No, I didn't.

Q   Did your attorney in California, that is to say, did the attorney for the Boldts in California inform you that, in fact, that it came out in the course of the trial that the Boldts did not own the vehicle in question?

A   No, I have no way of knowing that.

Q   That would be a surprise to you?

A   Complete surprise. Now, I have an action against the Boldts to get my money back, don't I?

Q   I would imagine you do.

A   We will take them to arbitration at 42nd Street.

Q   Now, Mr. Trecartin, if the Boldts did not own the vehicle and you had paid the Boldts, you would have no action under the subrogation agreement with Unigard?

A   Yes, we would.

Q   Even if the Boldts didn't own the vehicle and you had paid them?

A   That's right, sure, because they turned over their subrogation rights and the loan received was issued and the money was paid.

Q   If, in fact, they acted in a fraudulent manner in claiming they were the owners of the vehicle when they weren't and received money from Unigard and attempted to receive money from AAACON, then, in that case you would--Unigard would not have a subrogation action over against AAACON, would it?

A I wouldn't know what the rights would be. That's subject to the laws of Oregon and/or California, and I don't know what their laws would be. The policy was written in the State of Oregon and the loan agreement and whatever collateral rights, arose in the State of California.

Q In the State of New York you certainly know that if a party committed fraud against their insurance company and created an alleged subrogation interest when, in fact, none existed, the insurance company would have no claim over against the third party?

A No, that's not necessarily the law, no.

MR. BROWNING: I object.

MR. R. ZOLA: I am satisfied with that answer.

Q Mr. Trecartin, you stated, just so we can clear up the record at this point, that AAACON originally commenced a contempt action against the Boldts. You didn't mean that they initially commenced a contempt action against the Boldts in the New York State Courts?

A They got a Court Order directing arbitration

Q And at that time there was no contempt mentioned in any court papers, were there?

A No, no. Until the person has been contemptuous, you don't go back and order him held in contempt.

Q The contempt that you said AAACON sought and received from the State Courts was for a violation of a Court Order, is that correct?

A That is correct.

Q It is not for a violation of a contract per se, but from an Order of a Court per se?

A Naturally.

Q Sir, are you familiar with the law of New York with regard to the fact that a contempt proceeding is justifiable when a Court Order has been disregarded by a person subject to the jurisdiction of the Court?

A That's the only way the Court can enforce its order.

Q That's right. And that the contempt citation is not for a violation of agreement, but for a violation of an Order of a Court?

A There are a lot of people sitting up in West Street right now.

EXAMINER REILLY: We know what a contempt citation is, Mr. Zola.

THE WITNESS: The alimony jail is full of those people.

Q Sir, when the action was brought by AAACON against the Boldts initially in the New York State Court, did you represent the Boldts at that time?

A At no time, never.

Q And not at that time?

A Never, until this time.

Q You mean not even now, is that right?

A Least of all now.

Q Sir, are you familiar that under the New York Civil Practice Law and Rules, often referred to as the C.P.L.R., that an action to order arbitration may be contested by either party to it on the grounds that a valid agreement has not been made or complied with?

A True.

Q And, sir, can you tell this hearing whether or not such defenses were asserted by Unigard Insurance Company at any point in the proceedings?

A Continuously.

Q And, sir, without this--better than that, do you have a copy of the decision of Judge Tyler of the Southern District Court for the Federal District of New York?

A No, because it was never embodied into an order.

Q No, I say the decision.

A No, it's just an unsigned order.

Q No, sir. An order is based on a decision.

A I was present in court and was directed by Judge Tyler to put my subrogation claim into the arbitration, and I did.

Q Okay. Now, at that time, when you were present with Judge Tyler, you raised the questions of the validity of the agreement as well as the form of execution?

A Continuously.

Q And Judge Tyler sustained the validity of the arbitratio provision?

A He did, sir.

Q Did you at that time raise the question of whether or not the Federal Court has jurisdiction over the parties defendant in that matter and themanner of service?

A I don't think Judge Tyler would have ruled if he didn't have jurisdiction.

Q I didn't ask you that. I asked you if you raised that question--

A I have--

Q --of the jurisdiction of the Federal Court based on service of process.

A No. I also told him the California Court ruled that the arbitration clause was unenforcible and he overruled me.

Q Did you raise before Judge Tyler the question of jurisdiction of the Federal District Court for the Southern District of New York?

A No, I wasn't questioned under the Federal Arbitration Act leading to the amicable adjustment of disputes, as in this instance.

Q I am sorry.

A You have cited the applicable Federal Statute. Then you turn around in the State Court and say you have no recourse

Q Can you just tell me again--I will ask you whether or not your law firm and the Unigard Insurance Company and the parties defendant in the action before Judge Tyler raised the question of the jurisdiction of the Federal Court of the Southern District of New York over the parties defendant in that action?

A No, because you are suing a state corporation.

Q You didn't raise the question of service of process?

A You served the Unigard Insurance Company in Albany, New York, sir.

Q Would you answer the question yes or no?

A May I finish?

EXAMINER REILLY: He has answered it, and it is in the record, and he said no. N-o is what I heard, and then he said, "because."

Q Did Judge Tyler in his decision in open court direct that Unigard's subrogation interest in the claim of the Boldts would be limited to the amount paid to the Boldts by Unigard Insurance Company?

A It was so stipulated on the record.

Q Thank you.

A To which you assented.

Q I am sorry?

A To which you assented.

Q Sir, did not the decision of Judge Boldt in--Judge Tyler in open court--I beg your pardon, I am confused by the Judge Boldt who is on the president's Price Panel.

Did not Judge Tyler state that the arbitration that he was directing pursuant to the Federal Arbitration Act and the agreement between the parties was to occur between the Boldts and AAACON and that the right of collection by Unigard Insurance Company would be limited to that portion of any decision received by the Boldts in arbitration to which Unigard was subrogated?

A Absolutely no. Absolutely no.

Q He wouldn't then have signed an order stating that?

A There is no signed order in the case, Mr. Zola.

Q I think you will find it otherwise, Mr. Trecartin.

A I have a proposed order never signed.

Q I think you will find we have a signed certified one.

A Since it was never served on me, I have no notice of it, sir.

Q And you would have no notice, sir, as to whether or not such an order was served upon Mr. John Hartkon, the attorney for the Boldts in California?

A I would have no knowledge.

Q Whether or not such an order certified by the Court was also served upon the Boldts in California?

A I assume it was. Any paper that emanated from your office was served on everybody and his brother, so I would just assume so. I have never seen the order.

Q You just said a moment ago that it was never signed. Are you assuming now that it was signed and served or not signed and served?

A I don't have a signed copy of Judge Tyler's Order. I have no knowledge one way or the other whether he signed it or whether he didn't.

Q Sir, you are aware, are you not, that before a contempt issue was ordered by the Federal Court, the Federal Court in New York gave the Boldts and Unigard an opportunity to arbitrate the dispute with AAACON?

A I know nothing about what the Boldts did and what Judge Tyler did regarding the Boldts.

Q I am speaking about the action in which Unigard was made a party.

A I was representing Unigard Insurance Group as a defendant in the Federal Court action.

Q I am referring to that Federal Court action. Now, initially, the Federal Court, did it not, decided that arbitration should be had between AAACON and the Boldts and that the interest of Unigard would be limited to its subrogation rights if that Court directed arbitration; is that not correct?

A Judge Tyler directed me--I stipulated I would withdraw the claim for the property damage to the Boldt vehicle in whatever capacity and submit it to arbitration before the

American Arbitration Association, which I did.

Q May I just look at these papers?

A Yes.

Q Do you have in your hand the proposed order?

A Yes.

Q May I look at it, please, since I don't have it?

A It's not signed. It's not signed.

Q You are using it to refresh your recollection. I would like to see it to refresh mine since I don't have any documents with me.

MR. BROWNING: May I see the documents, Mr. Examiner? I think we are just quibbling over highly technical things that have nothing to do with these issues.

EXAMINER REILLY: I don't know what the extent of this cross examination is. It seems to me that we are trying some case out in California in which I really have no interest and neither does the Commission.

MR. R. ZOLA: No, sir. We are now discussing the practices and the alleged practices of AAACON with regard to arbitration, which, as I understood, was the purpose of bringing in this witness, that he was not brought in for the purposes of the underlying causes of action.

I think it is imperative that this record show, in an investigative proceeding, the entire nature of the process in the Federal Courts concerning the arbitration, and I believe that there have been many mischaracterizations by the witness that can be straightened out by cross examination.

I wish at this point to get the record straight and complete with regard to what occurred with regard to Unigard and the Boldts only insofar as the arbitration is concerned.

MR. BROWNING: I don't recall the last question by Mr. Zola, but it seems to me he asked the witness whether or not that copy that the witness has in his possession, from which he was refreshing his recollection, was signed or not.

MR. P. ZOLA: No, sir, that was not my question. My question was whether or not that was presented to him by Zola & Zola.

THE WITNESS: I have no way of knowing.

Q Sir, would you take out that document and look at the back of it? Here it is. The back of it.

A That's a notice of settlement.

Q Is that a notice of settlement by Zola & Zola? Is that their name on the back of it?

A Yes.

Q So this was served upon you?

A Certainly.

Q It was served upon you?

A I assume so.

Q Is there any other possible way that you could have gotten this?

EXAMINER REILLY: It is in his possession. He got it.

Q It was settled--

A That's a notice of settlement. I was never served with a settled order. That's a proposed order. Does it bear Judge Tyler's signature?

Q Does Federal Law require that a copy of a signed order be served upon the attorney or that a settled order, a proposed settled order be served upon the attorney for all sides so that they may propose any counter order they wish?

A It requires that a signed copy of an order be served upon me to be effective.

Q Do you know, sir, under what statute provision that is? I have never heard of it.

A What indications is there that Judge Tyler would approve the format of that order which you drew up?

Q Indeed, I would like very much to know, since I don't have my papers here, to know what form that would be in. Do you know of any Federal or State rule which requires that copies of an order be served upon opposing counsel to be effective?

A It's not effective until it has been signed by the Judge and served.

Q And served?

A Certainly served.

Q Do you know the statute offhand?

A Not offhand, no. No order is effective until it has been served on you in a signed form.

EXAMINER REILLY: Let's not both of you get into this protraction.

Have you developed whether or not that is a conformed copy?

MR. R. ZOLA: I can't. I don't have the original of it before this hearing with me. Had we had some notice, I would have had it and been able to develop that material.

THE WITNESS: Anyway--

MR. R. ZOLA: I believe there is no question before you.

THE WITNESS: I believe there is. There is a lingering question.

MR. R. ZOLA: There is not question before you and please be responsive.

EXAMINER REILLY: Wait a minute. Was there a question before the witness, Mr. Reporter?

THE REPORTER: No, sir.

EXAMINER REILLY: Hereafter, Mr. Zola, you address your questions with respect to admonishment to the witness or actions by the witness to me for ruling. Don't you tell the witness what he may or may not do.

Q Sir, did you cross notice for settlement an order in the initial case before Judge Tyler?

A No, sir.

Q You did not? Is it your experience that when an order is submitted to a Judge with notice of settlement unopposed, that it is normally signed?

A Oh, no. It has been my experience they will do anything they want with it.

Q You mean to say that the Judge may review the order himself and make changes in it or write his own order?

A You know, in the State Courts they are all reviewed by the Clerk of the Court.

Q I am referring to the Federal Court.

A I assume it is reviewed before he signs it to see if it complies in all respects with his dictation upon the record.

Q The last paragraph of the order that was settled upon you by AAACON states that, "It is ordered that respondents Robert Boldt and Gail Boldt and Unigard Insurance Company are directed to arbitrate any and all claims against petitioner, the claim of respondent Unigard Insurance Group in said arbitration proceeding be limited to the assertion of its lien in the amount of $1,992.42 on the proceeds of any recovery by the respondents Robert Boldt and Gail Boldt against the petitioner, said arbitration to take place in the City, County and State of New York in accordance with the other terms and provisions of the bill of lading agreement between the parties, and respondents are jointly and separately directed to institute said arbitration proceeding within five days of service upon them." Is that it?

A Yes.

Q You say Unigard Insurance Company has, in fact, after the date of appearance before Judge Tyler, gone ahead and arbitrated?

A Yes, placed it in arbitration, yes.

Q I ask you to refresh your recollection. Could it possibly have been pursuant to a certified copy of this order served upon you requiring it to be done in five days?

A No. It was pursuant to an oral acknowledgment in court that I would do that. That also was the subject of additional litigation in the State Court in which it was repudiated, was it not? You moved in the State Court. Let me read it.

MR. R. ZOLA: Would you direct the witness to answer yes or now?

EXAMINER REILLY: Counsel here will have redirect examination for you.

Q At any time did AAACON commence in Federal Court a contempt proceeding in this matter against Unigard Insurance Company?

A I have no way of knowing.

Q You have no way of knowing?

A Other than if it was embodied in that original order to Judge--original motion to Judge Tyler. I don't know what all the relief clauses were. I assume that was included.

Q I didn't make my question clear. First of all, just so that the record shows, there is nothing in this order--in this proposed order about a contempt, is there? You can look at it if you wish.

A No, I assume not. You read the "wherefore" clause.

Q I read one of them.

A All right. There may have been regarding the Boldts. I don't know.

Q Was there with regard to Unigard?

A No, no. On my oral stipulation to put it into arbitration, there was no necessity to interject any contempt.

Q Now, sir, are you familiar in any way with a contempt action in Federal Court against the Boldts for failure to comply with the Order of Judge Tyler?

A No, sir, I am not.

Q How many times did you appear before Judge Tyler with regard to this matter?

A I believe twice.

Q Yes. And the first time was on the hearing leading to the order directing arbitration, was it not? Or, let me amend that so it will be acceptable to you. To the decision leading to arbitration, was it not?

A I am not sure. I believe one was a preliminary hearing and the second was, one of the parties asked for an adjournment for one or another reason. I do recall two occasions.

What transpired at either or both is not clear in my mind.

Q Sir, do you recollect another occasion in which you appeared, or were there only two?

A I recall just two.

Q Sir, you say there was a contempt action against the Boldts brought by AAACON in the State Court, and I believe your testimony was that it is now around 12 or $13; is that correct?

A I gathered that from some correspondence from the attorney in California who is representing the Boldts, yes. I believe you have the document there.

Q But you don't know it of your own knowledge?

A No, sir, I don't.

Q Do you know, sir, that contempt was ever embodied in the form of a contempt judgment?

A I have no way of knowing.

Q Do you know, sir, whether or not that alleged contempt judgment was ever enforced against the Boldts?

EXAMINER REILLY: Wait a minute. He isn't here as a lawyer for the Boldts. He is here as a lawyer for an insurance company. His interest has nothing to do with the Boldts except in a subsidiary way. There is no reason why he should know these things, and if he does know them, he knows them by correspondence in an unrelated way. He can't testify to them here.

MR. R. ZOLA: Sir, if I may be heard on that point. He testified with regard to the contempt citation in the State Court and how much it amounted to. He also testified with regard to the--

EXAMINER REILLY: You sat there and you didn't object to it. I can't sit here and control and ride herd on the witnesses. You have the opportunity and the duty to object to all testimony which you believe is not relevant, pertinent and admissable.

MR. R. ZOLA: Sir, Mr. Kiel on behalf of the respondents herein, has a continuing objection to the type of testimony that has been introduced through this witness where he is not a shipper, where he does not directly represent a shipper and cannot--

EXAMINER REILLY: I realize that, and you just go ahead and proceed with your examination.

MR. R. ZOLA: I would like to be heard on this question, and my objection to your ruling, that he does not represent either a shipper or is he an attorney directly handling the claims of a shipper to the extent that there would be any exception to the hearsay rule thereunder.

EXAMINER REILLY: We have had your continuing objection. It is on the record.

MR. R. ZOLA: So I believe, sir, that an objection was appropriately made, and I believe that that testimony by him as to the California action by the Boldts and the New York State action against the Boldts, to which he was not a party, is not relevant or proper for him to testify about, and I believe that it should be stricken as not only hearsay, but in admissible. And, if it is not stricken, sir, I respectfully request the right to develop cross examination with regard to it.

EXAMINER REILLY: I can't recall at the moment whether the specific objection was made to that testimony or not, and I insist that this witness is not in a position to answer the questions about what happened to the Boldts or what the suits against the Boldts were, what the contempt money damages or money assessments were, and I am not going to let him sit here and speculate.

MR. R. ZOLA: Mr. Hearing Examiner, I respectfully request his testimony with regard to those matters be stricken.

EXAMINER REILLY: I am not going to strike the testimony. I will consider in my report and order how it will be handled. So far--well, I better not say that.

MR. R. ZOLA: Do I understand, sir, that I am not permitted to go ahead?

EXAMINER REILLY: You are not permitted to ask him any questions about the relationships of the Boldts. He has no interest in the Boldts whatsoever.

Q Mr. Trecartin, did Unigard Insurance Company ever transport a vehicle via AAACON?

A I have no way of knowing. I assume after this experience they never will.

Q You have no knowledge of any claim?

A None whatsoever, no.

Q Thank you.

A This is my only limited exposure to that relationship.

Q I am sorry, I don't recollect, Mr. Trecartin, did you testify that Unigard had given AAACON a notice of its subrogation interest or not?

A I believe there was some correspondence or document used in one connection from the Boldts' attorney in California indicating that he was the attorney for the Boldts and he was not the attorney for Unigard in action.

Q That isn't responsive.

A I have no other knowledge concerning what Unigard transmitted to AAACON in notice of its claim. I don't know.

MR. R. ZOLA: Mr. Hearing Examiner, before I ask the next question, in order not to antagonize this proceeding, I am trying to extablish whether or not the subrogation interests of Unigard has already been terminated by the res judicata action in California so that we can get--

EXAMINER REILLY: All right, ask him the question.

MR. R. ZOLA: Thank you.

Q Mr. Trecartin, the action in California has been noted to request damages for injury to the vehicle, and you have indicated that said cause of action was successfully terminated in favor of the Boldts, is that correct?

A To my understanding, yes.

Q Sir, if the Boldts successfully collect a cause of action for the damage to their vehicle and if Unigard Insurance Company is subrogated to that interest, is it not the obligation of Unigard Insurance Company, pursuant to its loan agreement, to collect those moneys from the Boldts?

MR. BROWNING: Objection, irrelevant and immaterial, beyond the scope of direct examination.

MR. R. ZOLA: We have already had extensive discussion about the proof of loss executed by the Boldts, and we are now in a very important question as to whether or not the parties, one of whom Mr. Trecartin represents, are seeking to collect twice for the same damages, which is in violation of the Interstate Commerce Act, as noted in 340-ICC, the recent report.

EXAMINER REILLY: Can you answer the question?

THE WITNESS: Yes, Judge, I can.

A It has already been determined that you are not correct in your assumption, namely, by a Judge here in the--Judge Culkin of the State Court. You went to him with just exactly the same proposition.

Q You are not responsive.

EXAMINER REILLY: Let him answer the question as we will decide.

MR. R. ZOLA: I believe the record will show it is not responsive at all to the question. We are discussing something now in New York. I asked him a question whether or not Unigard has a duty to collect over from the Boldts.

EXAMINER REILLY: I haven't heard what his answer is.

A The answer is no.

EXAMINER REILLY: All right, the answer is no.

A The answer is no.

Q Is it your contention, then, that if the Boldts collect for the damage to their vehicle, that Unigard may also collect from the same defendant for the same damage to the same vehicle?

A There are two answers to that.

Q Why don't you give us them one at a time?

A I will do that. Number one, the Boldts have not collected for the damage to their automobile in the California action. Number two, the position you maintain, which is addressed in the motion to Judge Culkin in the State Court, the exact same position you assume here, and he said no.

Q Do you have a copy of that decision?

A I certainly do.

Q May I see it?

A It hasn't been served on you yet. I just got it the other day.

Q According to your understanding of law, it isn't an effective judgment yet, is it?

A Not until it is served on you. It has just been served on you now, okay? Now it's effective.

Q It is not permissible to serve in a proceeding, sir.

EXAMINER REILLY: Let's cut it out.

MR. R. ZOLA: I agree, it would be nice to cut it out.

EXAMINER REILLY: You are doing your best.

MR. R. ZOLA: I am trying to develop a record with a very hostile witness whose sarcasm is replete in this record.

EXAMINER REILLY: All right, go ahead and ask your question.

Q Sir, you have stated that Judge Culkin indicated AAACON'S position was erroneous. I want to read to you Judge Culkin's statement and maybe you can enlighten me as to where it finds AAACON'S position erroneous.

Judge Culkin states, "The arbitration proceedings brought by respondent, Unigard Insurance Company, the petitioner heretofore, obtained an order in the United States District Court, Southern District of New York (same title) compelling the respondent to arbitrate.

"The petitioner is now aggrieved because the two co-respondents, Boldt recovered a judgment against petitioner in a separate California action arising from underlying contract of transportation of their automobile issued by petitioner and Unigard was the carrier who insured the automobile under a subrogation clause.

"In effect petitioner feels that Unigard as subrogor of the co-respondent could recover a jusgment in arbitration against petitioner resulting in a double liability.

"Although mindful of petitioner's plight, this Court is constrained to accede to the Federal forum wherein petitioner obtained the order from which relief is not sought."

Now, sir, in what I have read, is there any indication that the State Court has--the State Supreme Court, Special Term, Part I, has indicated that AAACON is wrong with regard to double liability?

A Read on.

Q To date--

A He denied the request for relief, didn't he? Did he or didn't he?

Q Will you answer my question?

A Answer mine.

MR. P. ZOLA: You are here to answer questions, not ask questions.

EXAMINER REILLY: All right, Mr. Zola, you be quiet.

A The order speaks for itself.

Q I will read the whole thing and then I will ask my question.

EXAMINER REILLY: I am not going to go through that. It is in the record. The witness has one opinion, you have another opinion.

MR. R. ZOLA: It is not in the record.

EXAMINER REILLY: Let me read it.

MR. R. ZOLA: The rest of the order is not in the record sir.

EXAMINER REILLY: What did you not read?

MR. R. ZOLA: Sir, I did not read from the--the last word I read was the word "sought."

EXAMINER REILLY: Where is that?

MR. R. ZOLA: Right where my thumb is (indicating).

EXAMINER REILLY: All right. You read down to "denied."

MR. R. ZOLA: "The Court is not persuaded that petitioner is not without a suitable remedy therein.

"Moreover, the petitioner assiduously avoided an explanation for its failure to seek appropriate relief either in the California Appellate Court or in the Federal Court to forestall a judgment obtained by the respondents Boldt.

"Accordingly the application in all respects is denied."

Q Now, sir, I ask you again, is there anything I have read in that order which states that double liability for the same damage is sustainable?

A I believe it speaks for itself.

Q Would you answer my question

EXAMINER REILLY: I think we have gone through this enough. You have your opinion, the witness has his opinion, and I am just not going to listen to any more.

Q Sir, can you tell me whether or not, to your knowledge, AAACON has appealed the order of Judge Culkin?

A Yes.

Q Can you tell me further, sir--

A I know they have.

Q You know they have?

EXAMINER REILLY: You say you haven't been served with the order. How could you appeal something that hasn't been served on you?

MR. R. ZOLA: Because it is already printed in the New York Law Journal.

THE WITNESS: I have never been served with a notice of appeal.

Q Do you know whether or not--

THE WITNESS: Would you show me service and notice of appeal?

MR. R. ZOLA: Mr. Hearing Officer, I ask you to make the witness just answer questions, not pose questions.

Q Can you tell me, sir, whether or not you know whether AAACON has sought the relief suggested by Mr. Justice Culkin in the Federal Court?

A I have never been served with a notice of appeal in the

Second Circuit.

Q Not a notice of appeal, sir, the relief suggested by Judge Culkin, that is to say, to bring the same motion to avoid double liability, before the Federal Court, in which the matter is now pending?

A I have received no papers seeking any relief, and I assume I would be served with respect to any relief of any nature.

Q Sir, I have previously asked you with regard to the arbitration laws of the State of New York the question of the raising of the validity of an arbitration agreement and its execution. Now, I ask you, do you know, sir, whether or not a similar provision exists under the Federal Arbitration Act, 9 U.S. Code, Sections 2, 3 and 4? Is the answer to it that the provisions are similar?

A I wouldn't offhand know. I have them here. I wouldn't know if they are similar in purport.

Q You say you have them here with you?

A I have some of the Federal Code.

Q May I see what you have?

A No. Why? It's just photostats.

EXAMINER REILLY: He is not reading from them. He says they are Federal Code Sections. He hasn't testified. If he starts to testify to them, I will let you see them.

MR. P. ZOLA: Mr. Hearing Officer, we have heard testimony from this witness with regard to the question of arbitration provisions brought in the Federal Court, and we have not had, unfortunately, an opportunity to bring our papers into this proceeding, and this witness has testified that he is an attorney and an expert.

THE WITNESS: No, no, not an expert.

EXAMINER REILLY: He didn't say he was an expert.

MR. R. ZOLA: He is an attorney and he has handled this proceeding on behalf of Unigard Insurance Company. I am merely seeking to cross examine him with regard to the statutes under which this was brought and to find out what issues were raised before the Federal Court, and if the witness does not wish to provide us with the documents, I respectfully request that he be bound over so that we may have an opportunity to bring in our documents and cross examine him.

EXAMINER REILLY: Would you please stop making these speeches? These were excerpts from Federat Statutes?

MR. R. ZOLA: They are not excerpts. They are the entire Federal Statute, and it is very short.

THE WITNESS: It is not.

MR. R. ZOLA: You have Section 4 there and Section 2 is there.

EXAMINER REILLY: All right, let's get off this.

MR. R. ZOLA: May I have a ruling on my request?

EXAMINER REILLY: I haven't the slightest idea what your request was. I gave you a ruling with respect to--whether or not he would turn over the documents to you, and I said no. If you start to testify from them, then I would be faced with the ruling. He hasn't testified from those documents.

MR. R. ZOLA: Your Honor, then, since he will not turn the documents over to me, I respectfully request that he be bound over so that I have an opportunity to present the documents and cross examine him with regard to those documents from our files.

MR. BROWNING: If he is talking about a statute, a code, I don't know what--

MR. R. ZOLA: All the documents, not only that, all the documents.

MR. BROWNING: He is talking about a code.

MR. R. ZOLA: So it is clear, the witness is not tendering over his files to us for cross examination. We do not have our files here for cross examination, and I frankly am at a loss as to how to proceed to develop testimony on important issues before this hearing in the absence of either cooperation from the witness or our own files in the hearing room.

MR. BROWNING: Mr. Examiner, as I understand the question, it relates to reading sections of the code into evidence. I think that is irrelevant and immaterial, and I don't know why he needs that for cross examination.

EXAMINER REILLY: I don't, either. The question, as I recall--the question for the witness was whether the code provisions in New York State and the Federal Code provisions were similar.

MR. R. ZOLA: Your Honor, just so I may make it clear, I do not want him to read into the record the code provisions. I am sure that the Hearing--

EXAMINER REILLY: This is precisely what I don't want him to do.

MR. BROWNING: We both agree that he is not to do that. He merely wants to question him with regard to the issues raised before Judge Tyler. Why don't you ask him that question?

MR. R. ZOLA: Sir, if I had the document, I would be able to.

EXAMINER REILLY: What document do you want?

MR. R. ZOLA: I want from the witness the copies of the code sections that he has from which I will be able to ascertain the issues that are automatically raisable before Judge Tyler so that this record will be complete in that regard.

MR. BROWNING: Mr. Examiner, if he is trying to get at some speculative question as to what--

EXAMINER REILLY: I don't understand what you are trying to get at, Mr. Zola.

MR. P. ZOLA: May we go off the record, Mr. Examiner?

EXAMINER REILLY: Off the record.

(Discussion off the record.)

EXAMINER REILLY: On the record.

MR. R. ZOLA: Your Honor, let the record show that I have been handed a multipage document which is an order to show cause in the litigation about which this witness has been testifying.

The paragraph of the affidavit in support of the petition raises the questions of jurisdiction over the subject matter, original jurisdiction in the Federal Courts over the parties, and this, I submit, is not the document with which I can examine this witness.

Now, Your Honor, this witness has in his possession, I have seen it in his folder, copies of some parts of the Federal Arbitration Act Statute.

THE WITNESS: I have Title IX, Section 2.

MR. R. ZOLA: I would like to see that. I might say that in the requesting to see that, I do not feel that that alone, that section alone,--I had eluded to Section 2, 3 and 4--are sufficient to examine this witness.

Q (By Mr. R. Zola) Sir, you have presented me with a sheaf of attached documents which contains, does it not, the Section 2 of the Federal Arbitration Act, 9 U.S. Code, Section 2, plus some annotations from Section 4 of the Act: is that correct?

A Yes.

Q Sir, with regard to Section 2, since it is just one sentence, I will read it into the record.

"A written provision in any maritime contract or contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction or the refusal to perform the whole or any part thereof or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract transaction or refusal shall be valid, irrevocable and enforceable, save, upon such grounds as exist at law or in equity for the revocation of any contract."

Did you underscore the words from, "save, upon such grounds as exists?" Is that your underscoring?

A Yes.

Q Can you tell me, in your defense of the proceeding brought before Judge Tyler, did you raise, "such grounds as exist?"

A I don't believe so.

Q You did not?

A I don't believe so.

Q Can you tell me the grounds of defense that you did raise before Judge Tyler?

A De minimis non curat lex. I tried to show Judge Tyler, obviously unsuccessfully, that this was hardly within the

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dignity of the Federal Court, and he agreed with me on that score, but he said that within the meaning and letter of the Federal Arbitration Statute, this matter was arbitrable.

Q And, sir, did you raise--

A Incidentally, if I may just finish, because constantly in my proceedings the validity of the agreement was challenged unsuccessfully.

Q Can you tell me the grounds on which the validity was challenged?

A Yes. The Boldts denied that they ever were witness to or a party or acceded to any of the terms of the arbitration clause in the document that was signed by them, by Mrs. Boldt

Q Was there any other grounds, or is that the totality of the grounds?

A That was the principal grounds, and the jury in California agreed with it.

Q But the Judge in New York did not, did he, Judge Tyler?

A Obviously.

Q Sir, you say that the grounds upon which you attacked the validity, as I understand it, was that the Boldts did not accede to the agreement; is that correct?

A And I was successful in that, yes.

Q Sir, were they not successful in California in suing on that agreement?

A The agreement was found, as I understand the judgment there, and I don't have a copy of it, they were awarded punitive damage for the fraud in the inducement of the contract by one of your concerns out there.

Q Since you have raised it, I am going to have to go into it. Is there anything in either the original complaint in California or the amended complaint concerning fraud in the inducement as opposed to specific fraud counts which I wish by this time would be stipulated to but which were read into the record?

A I have no way of knowing.

Q Sir, I will show you these documents and ask you to examine them, if you have no way of knowing.

A You read them into the record.

Q I didn't read the whole document. If you can find any fraud in the inducement in there, I would like to know it now.

A Yes.

Two of the fourth cause of action.

Q No, sir. Would you tell me where the word--let me see.

A May I read it?

Q Let me just look at it first.

Yes, sir, I would like you very much to read that and tell me when you are finished where fraud in the inducement of the contract is mentioned.

A "On or about March 8, 1969, and at times prior thereto defendant conspired to defraud plaintiffs and other consignors by making material misrepresentations of fact and by making promises without the intention to perform thereunder, including the following:--

Q And then it lists the following, which has been read into the record, is that correct?

A True.

Q Is there any mention there or anywhere else of fraud in inducing the signing of the agreement?

A Yes, subparagraph E. "Representation that the bill of lading presented to consignor is in accordance with said representations." That means the aforegoing representations? Sir, is it fraud?

A I am just reading it.

Q When it refers to said representations in Item E, would you tell me which representations in your interpretation it refers to?

A Representing that the bill of lading presented to consignor is in accordance with said representations listed in A, B, C, D and E.

Q In A, B, C, D and E, in any one of those, in all of them is there any indication of fraud in the inducement of the signing of an agreement?

A Yes.

Q Will you tell me where, please?

A Representing that shipments are fully covered by liability and property damage insurance.

Q But is that fraud in the inducement of signing of the agreement, sir?

EXAMINER REILLY: Wait a minute. We are getting into a question of semantics and argument, and I know what it means. He may know something else, that in his mind it means something else. Apparently in your mind it means something else.

MR. R. ZOLA: I want to understand for the record what the understandings of the various parties are as to what it means.

THE WITNESS: This is the way I interpreted the allegations of the complaint which is drawn in the California action.

Q In order to save time, there is nothing else explicit in the complaint or the amended complaint with regard to fraud in the inducement?

MR. BROWNING: I object. He has read it into the record.

MR. R. ZOLA: I just asked him if it is explicit.

EXAMINER REILLY: You are not trying to save time at all.

MR. R. ZOLA: Mr. Hearing Officer, I object to that characterization. We would be able to save time if we had our records here. I am doing the best I can under the best of circumstances.

EXAMINER REILLY: I don't know what you objected to. I can't rule.

If the question is to the effect that the word "inducements" or "induce" does not appear in there, he may answer.

MR. R. ZOLA: The words "fraud in the inducement," which is a specific cause of action separate and apart from any count of fraud--

Q Mr. Trecartin, you testified a few moments ago from memory--maybe we can save time on this. Do you have copies of the papers you filed in opposition to the Federal Court motion for directing arbitration, so that we may know the issues raised before the Federal Court?

A I believe so.

Q May I see them, please?

A It is another copy.

Q Why hide it from me?

EXAMINER REILLY: Why don't you stay away from the witness?

Q Mr. Trecartin, do you have any additional documents, or is this the only document?

A It's the only document. I have another copy of it here, an exact duplicate.

Q Were any other documents filed, sir, by your law firm or Unigard Insurance Company or the Boldts in the matter before Judge Tyler?

A I believe there is required by the rules--there has to be in the Federal Court a brief.

Q Yes.

A Under Rule 34, or whatever it is, yes, it is a brief, a memorandum of law.

Q Without getting too close, may I have a copy of that?

A Sure thing.

Q And, sir, were there any other documents filed?

A That's all.

Q No other affidavits? Are you sure?

A To the best of my recollection, my file does not contain anything additional.

Q Is your file complete, sir?

A No file is complete. It's as complete as I know it to be at the present time.

Q Do other members of your office have access to the file?

A No one would touch it, no.

Q Sir, you had earlier stated that the sole ground upon which you contested the validity of the contract between the parties was that it was not binding upon the Boldts because they had not acceded to the agreement; is that correct?

A No, I don't think I ever challenged the validity of the agreement because it was readily determined in the first hearing.

Q I believe that's in the record. I am not being obstreperous.

MR. BROWNING: As I recall, Mr. Examiner, he was referring to what issues the boldts raised in California to his recollection.

MR. R. ZOLA: Excuse me. I will make it clear.

MR. BROWNING: I am talking about the witness.

Q I will make it clear again. In referring before to the issues raised before Judge Tyler, we had read Section 2 of the Federal Arbitration Act, and that section stated that the contract could be attacked upon such grounds as exist in law, being Whitney, upon the revocation of an agreement, and I asked you at that time what grounds you had raised, and you said that you believe the sole ground raised was that the parties had not acceded to the agreement. Is that correct?

A If I said that, it would be in my documents there.

Q No, it would be in the testimony. In order to resolve this matter, I would like to go over with you very briefly the issues that you did raise before Judge Tyler.

MR. BROWNING: I submit this is irrelevant and immaterial at this proceeding, what issues were raised before Judge Tyler.

MR. R. ZOLA: We are not discussing the transportation or the underlying shipment. As I understand it, the sole purpose of this witness now is to indicate what actions Unigard took and what actions AAACON took with regard to the arbitration. Part of that was what was raised before the Judge and what Judge Tyler decided. We have had hearing contest for the last hour and a half, questions concerning--

EXAMINER REILLY: All right, let's cut it off. Ask the witness the question.

Q Is it not true that on page 2 you raise the question of whether or not the Boldts had agreed to the arbitration provision and the bill of lading agreement?

A Yes.

Q Sir, did you not also raise the question of whether or not the arbitration provision, the bill of lading agreement and the arbitration sought by AAACON would oust the Courts of jurisdiction? I believe your phrase is, usurp the jurisdiction over the matter.

A In the State of California.

Q Is that correct?

A Yes.

Q And, sir, did you not raise the question of fraud or illegality in the inducement of arbitration agreement before Judge Tyler?

A I certainly did.

Q Did you not raise before Judge Tyler the question of jurisdiction of the Court over the parties and the subject matter?

A Upon the grounds that they were specifically decided by a Court of record in the State of California adversely to the claim you made before Judge Tyler.

Q Your answer is, then, I take it, yes?

A If you interpret it that way, yes.

MR. P. ZOLA: Ask him again.

Q I don't wish to prolong this again, but your answer is yes?

MR. BROWNING: This is a filibuster.

EXAMINER REILLY: The answer is in the record. It is perfectly clear to the examiner.

MR. R. ZOLA: Fine. Thank you, Mr. Examiner.

Q You say that it had been set aside by the California Court. Do you know what the California Court proceeding was with regard to the enforcement of the arbitration agreement?

A Only what I got by hearsay.

Q Your testimony with regard to the California--alleged California enforcement of arbitration provision is hearsay?

A I assume by returning a judgment, the Court found it had jurisdiction despite the arbitration clause which you urged upon the Court. You made a specific motion out there, I understand, to contest the jurisdiction, and it was ruled against you.

Q Is that what you understand?

A I don't know it to be a fact. I got it from correspondence from the attorney in California.

Q Do you have that correspondence with you?

A Before a Court can render a judgment, it must have jurisdiction.

Q Do you know, sir--

EXAMINER REILLY: He stated he doesn't know.

MR. R. ZOLA: Excuse me.

Q Do you know, sir, whether or not arbitration is compatible with continuing legal actions c-mmenced before Courts in states?

A It is not compatible.

Q It is not, sir?

A No.

Q Do you have any decisions--I realize this is off the top of your head--any decisions or statutes on which you base that opinion?

A From what I have gathered from reading the cases without citing any specific case, I am at a loss to do so. It is my understanding that an arbitration clause entered into cleanly between the parties removes the matter from the jurisdiction of the Court to an arbitration forum. That's the whole purpose of it, and the Court will give sanction to it if all the other procedures and safeguards are met.

Q Is that the basis on which you stated that the--stated before Judge Tyler in your papers that the arbitration agreement ousts the Court of jurisdiction, that is to say, the California Court, as you clarified it?

A I urged that before Judge Tyler, obviously unsuccessfully.

Q And Judge Tyler did direct arbitration, at lease in a decision, to your knowledge, is that correct?

A A stipulation was entered into before Judge Tyler that the Unigard interest in the affair would be submitted to arbitration.

Q At the same time, was not the California action commenced and actually finished and an appeal taken?

A I don't know what the time sequence was, and I know nothing about an appeal.

Q Was the action in California--strike that.

You stated earlier that you had had a conversation with me which occurred before the trial, that is to say, a conversation at the time you entered into the stipulated in front of Judge Tyler ordering arbitration, and this occurred before the California trial on the action? Is that not correct?

A If I understand your question, you are asking me whether you said you had been to California on the California action, and we discussed--

Q No, sir.

MR. R. ZOLA: Mr. Hearing Examiner, will you please direct--

EXAMINER REILLY: The witness may rephrase it for his own clarification.

Q Did you not testify, and is it not the fact, that the

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stipulation which resulted in Judge Tyler's decision and the conversation engaged in with me at that time occurred before the trial on the merits in California?

A If I recall the sequence, a citation for contempt was made before Judge Bear, and his ruling had not come down, and the trial was imminent in California.

Now, I understand that the trial was adjourned in California, but, as you alleged, I believe in your moving papers, and I don't recall them, that the trial was imminent and you got an order to show cause from Judge Tyler in the Federal Court while awaiting a ruling from Judge Bear on a contempt citation in the State Court.

Q Is it then, sir, your testimony that the decision rendered by Judge Tyler based upon our stipulation occurred before the trial on the merits in California?

A I don't know what the sequence was, no.

Q Sir, if a trial on the merits had occurred in California, would not the issue be res judicata and foreclosed before the Federal Court here in New York?

A I urged that on Judge Tyler and he disagreed with me.

Q Are you then stating that, in fact, the trial had already occurred on the merits in California?

A No, no, no, because you yourself, as I understand it, raised the validity of the arbitration clause in California by motion and the California Court had ruled that the arbitration clause was not enforceable.

Q Sir--

A I claim it res judicata, Judge Tyler said no.

Q I was asking you about--

A He has held me wrong on other occasions.

Q Sir, I was referring to the trial on the merits. You know a trial on the merits is a trial of the cause of action. Now, sir, I ask you again, did not the decision of Judge Tyler, based on the stipulated of the parties, occur before a trial on the merits in California?

A Merits of what?

Q Of the underlying cause of action for damage to the vehicle?

A No, because there was no cause of action out in California for the damage to the vehicle. That was withdrawn from the California action and placed in arbitration, the $1,992 claim.

Q Sir, do you have any evidence that that was withdrawn?

A Yes.

Q May I see it, please?

A I don't have it before me. I stipulated before Judge Tyler I would withdraw that claim and put it in arbitration. I did file it in arbitration.

Q I want to get that very straight. You stated at the beginning of your testimony that Unigard Insurance Company had no interest in the California action, is that correct?

A That is correct.

Q Now you tell me that you stipulated before Judge Tyler that Unigard was going to remove its cause of action in the California case. Can you reconcile those statements?

A Yes.

Q Would you please?

A The cause of action brought by the Boldts for the property damage to their car under California Law gave Unigard a lien on that cause of action only for the moneys they had paid to the Boldts under the subrogation collision insurance. There was an action for the property damage to the Boldt vehicle arising out of the collision. Whatever its nature--and, under California Law I was advised it was just a lien--but, whatever its nature or cause, that portion of the plaintiff's claim, whoever they might have been, whether the Boldts or Unigard, in their derivative capacity, the action, period, for the damage to the vehicle; $1,992, was ordered removed from the California action and to be placed in arbitration before the American Arbitration Association.

Q Sir, who ordered that?

A Judge Tyler and--no, he didn't order it. I stipulated to withdraw it.

Q Up until that time, is it your understanding that that part of the claim of Unigard under its lien was in the

California action?

A There was an action on behalf of the Boldts in the California action for the damage to their automobile.

Q Sir, would you answer my question?

A That's the only way I can answer it, sir.

MR. R. ZOLA: Mr. Hearing Examiner, the witness is not being responsive, and I believe he is being evasive. The question is not a complicated one. I respectfully direct him to answer it yes or no.

EXAMINER REILLY: I will not direct him to answer it yes or no. The answer is in the record.

Q Did Unigard Insurance Company file any document in the California action removing that cause of action?

A I don't know. I don't think so.

Q Was it removed by fiat of the Federal District Court here in New York?

MR. BROWNING: This is repetition. He has already stated his understanding of a situation that he stipulated, as I understand it, before Judge Tyler, that that part of the action in the California lawsuit be removed and go to arbitration, which he has also testified was, in fact, done by him.

He placed the matter in arbitration here in New York. Now, this is repetition.

MR. R. ZOLA: It is not repetition.

EXAMINER REILLY: I will wait until you finish.

MR. BROWNING: I am finished. Go ahead. I object to the question.

MR. R. ZOLA: The reason it is not repetitious is because, as Mr. Browning has said, and I don't know where Mr. Browning gets the statement from, that Mr. Trecartin had it removed from the California action, and I would like to know how it was removed. It didn't remove itself, and I believe this is very relevant, and the issue that it is relevant to is the question of whether or not the action brought by Unigard Insurance Company for arbitration had already been determined and was res judicata in the California action.

THE WITNESS: Let me answer you this way now that I understand the content and purport of your question.

A After leaving Judge Tyler's chambers and after oral stipulation on his record, I called the California attorney and I said, "I am placing whatever claim there is in this incident for the property damage to the automobile into arbitration, period." That was the sum and substance of it.

Q That meant that unless it was removed from the California action--there was then an action in arbitration that you had placed and informed your California attorney of, and I ask you, sir, was that action in California removed by any individual, and if so, who and when?

A You have a copy of the judgment.

Q No, sir, I have a copy of no judgment. I have a copy of nothing in front of me except what you have provided.

A I don't know what occurred in relation to that in California. I don't have any way of knowing. But I am informed that that cause of action is now a matter before arbitration.

MR. R. ZOLA: Your Honor, at this point I wish to move that this witness be bound over so that we may bring in our documents and show relevant cross examination with regard to the question of whether or not in fact we have two causes of action being asserted by parties claimant against AAACON and whether or not the arbitration provision has been properly enforced and such other issues as have been raised before the Federal Court here in New York and the State Courts here in New York so that this witness and the specific testimony herein will be somewhat enlightening, and in this regard I note, Mr. Hearing Examiner, that the conclusions reached by Mr. Tomany, who is not at attorney, would appear to be contradicted in many respects by the testimony of this witness, and I think it is relevant and material.

MR. BROWNING: Mr. Examiner, I submit that it is not relevant and it is immaterial to the direct examination of this witness, to the matters that he testified to on direct examination.

We Don't have to try those lawsuits in each of the jurisdictions, in each of the courts. Now, I have no objection to Mr. Trecartin coming back, but I know that he does because he has other commitments. He has not been subpoenaed by the Commission to appear here. He is here voluntarily. I don't know how he can be bound over, in the first place. I don't think we have the power to bind him over.

In the second place, he must appear, as I understand it, at a jury trial in a New York Court. As a practical matter, he cannot be available tomorrow morning. It is possible, perhaps, he might be able to come back at a later time, and I would ask him that, if that's possible, and I also ask for his cooperation in the matter if he can do it.

EXAMINER REILLY: Wait a minute. I don't know whether Mr. Trecartin is in a position to come back at a later time or not. We are going to finish this hearing sometime this week. I don't know what his commitments are. He is not here under subpoena. There is no way I can hold him here the way I would wish to hold him here.

MR. R. ZOLA: Your Honor, alternatively, if the witness cannot be submitted to full cross examination, I respectfully request that his testimony be stricken.

EXAMINER REILLY: I am not going to strike anything until we find out whether he will come back, and I will consider it at that time.

THE WITNESS: I am directed by Judge Pino to select a jury in a construction case. If anything happens, I will make myself available.

EXAMINER REILLY: We will leave it at that.

MR. BROWNING: Excuse me, Mr. Trecartin, I do have a couple of questions. I am not going to belabor this at all. I just want to get the order of things.

REDIRECT EXAMINATION

Q (BY MR. BROWNING) At the time you submitted the matter to arbitration in New York, had the Boldts obtained a judgment in California?

A I do not believe so.

Q Did the New York order compelling arbitration apply to Unigard as well as the Boldts? The New York order, now.

A Yes.

Q It did. Are you familiar with any contempt order by the New York Court in respect to your client?

A There is none. I purged myself in behalf of Unigard. Unigard was purged.

Q That's in the New York Court now?

A Yes.

Q How did you purge yourself?

A Well, it was a conditional order. If I didn't go into arbitration, I would be held in contempt.

Q Did you before Judge Tyler ever offer any evidence concerning the circumstances under which Mrs. Boldt had signed the bill of lading?

A I do not believe so, because I was not conversant with that aspect.

Q This conformed copy--I mean, this copy of the order of Judge Tyler and the matter of settlement, or notice of settlement, was that a conformed copy that you had?

A All I have is a proposed order.

MR. BROWNING: That is all I have got.

THE WITNESS: The only copy I have got is unsigned.

EXAMINER REILLY: We will recess until--

MR. R. ZOLA: Mr. Hearing Examiner, I have some questions.

EXAMINER REILLY: No, you don't have any questions.

MR. R. ZOLA: Then, Mr. Hearing Examiner, I object to not being able to--

EXAMINER REILLY: There isn't anything here that can't be decided when we determine whether or not Mr. Trecartin can come back, and I am not going to sit here and listen to any testimony which may or may not--well, I am going to listen to the testimony because I have to make a ruling at some time in the future, if Mr. Trecartin doesn't come back.

MR. R. ZOLA: Mr. Hearing Examiner, then let the record show that we do have additional questions.

EXAMINER REILLY: The hearing is recessed until tomorrow morning at 9:30.

(Time noted: 5:50 o'clock p.m.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of:

Re: MC-C-7287
AAACON AUTO TRANSPORT, INC.,
Investigation and Revocation of Certificate

MC-C-7287 (Sub. No. 1)
AAACON AUTO TRANSPORT, INC.,
Petition of Declatory Order

FF-359
AUTO TRIP USA, INC.,
Freight Forwarder Application
New York, New York

March 21, 1972

26 Federal Plaza
New York, New York

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:30 a.m.,

BEFORE: JOSEPH H. REILLY, Hearing Examiner.

APPEARANCES:

(As heretofore noted.)

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PROCEEDINGS

Exam. Reilly: The hearing will be in order.

Will you stand and raise your right hand.

JOEL GOTLER

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Did you on or about August of 1970, undetake to drive an automobile for Aaacon Auto Transport from New York City to Austin, Texas?

A Yes, I did.

Q Was that automobile consigned to one Sanford J. or Kenneth P. Rosen, to the best of your recollection?

A Yes.

Q I show you a statement which was the bill of lading agreement and is marked Exhibit No. 60 in this proceeding. It has what appears to be your signature. Do you see that?

A Right; that is my signature.

Q Mr. Rosen appeared and testified in the proceeding that the automobile was delivered to his wife. Do you recall that?

A I delivered it to her in front of a public--a grammar school. She was waiting for one of her children to come out of class. She was registering her child. I delivered the car about 10:00 o'clock in the morning.

Q Did she sign the bill of lading saying that she had received the car?

A Immediately.

Q Was there any known damage to the car, as far as you were concerned?

Mr. Browning: I object. It is a very leading question.

Mr. Kiel: I will withdraw the question.

Q Did Mrs. Rosen have an opportunity of inspecting the car?

A Sure she did.

Q Did she look at it?

A No, she didn't.

Q In any event Mr. Rosen testified that there was a broken handle on the device that moves the mirror from inside the door to a position outside the door on the driver's door. Are you familiar with mirrors of that type?

A Yes.

Q Now, was that mirror handle or any part of it broken, to your knowledge, when you delivered the car?

A I don't recollect.

Q Did you take tape to piece together, have that handle or any parts of the device that guided the mirror to make appear that the mirror movement system was functioning properly?

Mr. Browning: I object to that question inasmuch as it is a very leading question and also he is assuming a fact which he hasn't developed here with the witness,--

namely, that to make appear that the mirror was not damaged.

Exam. Reilly: Did he tape it or didn't he tape it? He can testify as to that.

The Witness: I didn't tape it.

Q When you received the car and started to operate it, did you make any adjustments to that mirror so that you could see out of the side of the car?

A I believe I must have made an adjustment in New York City.

Q Do you recall whether that was operative or not operative?

A It seemed sufficient from New York to Austin, Texas.

Q Did you hit anything while you were driving or did anything hit the car, to your knowledge?

A No.

Mr. Kiel: I have nothing further of this witness.

Just one moment.

Q (By Mr. Kiel) Did you write a letter to Mr. Zola with respect to this situation when he inquired of that?

A I know of correspondence. I corresponded with him.

Q I show you a document. It is dated December 28th. Is that a letter that you wrote?

A Yes.

Q What year is that?

A When did I write this letter?

Q Yes.

A 1971, December 28th. 1971.

Mr. Examiner, May I ask to have this communication identified? We can use the original, if you like.

Exam. Reilly: Marked for identification as Exhibit No. 154.

(Applicant's Exhibit No. 154, Witness Gotler, marked for identification.)

Mr. Kiel: I have nothing else of this witness.

Mr. Browning: What was that, 154?

Exam. Reilly: Yes.

CROSS EXAMINATION

Q (By Mr. Browning) Mr. Gotler, were you aware that under the terms of the bill of lading that you also signed Exhibit No. 60, which was shown to you by counsel, that you could be sued by Aacon in connection with any damage to the vehicle while it was under your control?

Mr. Kiel: Objection. That's a conclusion. There is no evidence to support that.

Mr. Browning: I will rephrase it.

Q What was your understanding at the time you signed the bill of lading when you left the car as to any damages, who would pay for what damages?

A I read the necessary material before I took the car out and I guess if that was one of the stipulations, I had read it.

Q What was the stipulation?

A I can't recall verbatim.

Q What was your understanding at the time you took the car from Aaacon in New York as to who would pay for the damage to the car?

Mr. Kiel: Objection.

Q If you had an accident on the way?

Mr. Kiel: It's been asked and answered. The witness said he didn't remember.

Exam. Reilly: That isn't precisely what he said. He is now asking him what his understanding was, not the precise language.

A I don't remember.

Q Wasn't it a fact that you knew that you would be responsible for any damage to the car?

Mr. Kiel: Objection.

Exam. Reilly: He can state what his understanding is.

Mr. Kiel: The witness answered he didn't remember.

Exam. Reilly: This is a different form of the question.

A Would you rephrase that?

Q Isn't it true that you knew you will be responsible if anything happened to the car en route?

Mr. Kiel: Objection.

A That's not true because I don't recall having heard that.

Q When did you drive this car?

A Approximately August 19, 1970 or August 21st, one of those.

Q How many cars have you driven for Aaacon?

A One.

Q Since that time?

A None.

Q Before that?

A None.

Q Just one?

A Just one.

Q What was the purpose of your going to Austin, Texas, you personally?

A Well, I was en route to Mexico.

Q When you delivered the car to Mrs. Rosen, you testified that she had had the opportunity to inspect the car?

A She sure did.

Q Did you deliver it to her on the side of the street, is that right, on the sidewalk in front of the grammar school?

A On the sidewalk in front of a public school in Austin, Texas.

Q Do you recall how you presented the bill of landing to her?

A I don't really recollect exactly the procedure I used, but I know I had it in my hand and I gave it to her and she looked at it and said, "Okay," and signed it and gave me $50.00.

Q Did you make any prior arrangements with her to make delivery of the car?

A I contacted her when I got to Austin, Texas. I was given two phone numbers to call. I reached her at one phone number. She told me where she would be and when she would be there.

Q How much notice did you give her?

A I don't remember.

Q Do you recall whether the car had any operating defects en route?

A It didn't. It ran very well.

Q What kind of a car was it?

A A red station wagon. I believe it was a Dodge or a Plymouth or--I really can't remember. But I know it was a red station wagon, four door.

Q Red station wagon, four door. You don't know what kind it was?

Mr. Kiel: The witness has said what he thought. He happened to be right, but--

Q Did it have an outside mirror? Do you recall?

A I don't recall, but--

Q You don't recall. That's the answer to the question?

A I don't recall.

Mr. Browning: That's all I have.

Mr. Kiel: I have nothing else. I move Exhibit No. 154 be marked in evidence.

Exam. Reilly: The witness may be excused.

Mr. Keil: Thank you, Mr. Gotler.

Exam. Reilly: You didn't move for 154.

Mr. Browning: I was about to do that.

Mr. Keil: I didn't know what exhibit number it was and I asked Mr. Browning and he didn't either.

Mr. Browning: Mr. Examiner, I object to the admission of 154 on the ground that it is not dated. We don't even know what date this letter was.

Exam. Reilly: He testified that it was in the year 1971. I think that cures any defect, Mr. Browning.

Mr. Browning: This is 1971, is that your understanding?

Exam. Reilly: Yes, Nos. 153 and 154 received.

(Applicant's Exhibit Nos.
153, 154, Witness Gotler,
was received in evidence.)

Mr. Browning: Mr. Examiner, at this time, with the exception of the possibility of having Mr. Trecartin recalled to the witness stand for the purpose of further cross examination by the respondent, and with the reservation of the right to call other witnesses in rebuttal to the respondent's case, this is all the evidence the bureau has at this time to offer.

Exam. Reilly: Does the protestant wish to proceed at this time?

Mr. Zola: Mr. Hearing Examiner, if I may at this time, I would like to make a motion based upon your ruling yesterday concerning part of the testimony of Mr. Trecartin relating to the litigation that occurred in Los Angeles, which, if I may paraphrase, you stated, should have been omitted and was objectionable; and the testimony of a similar nature given by Attorney Petzall with regard to litigation with which he was not directly engaged in South Carolina; Attorney Jacobs concerning litigation in Boston that he was not handling, the testimony of Mr. Ray Dean Rust concerning litigation in North Carolina with which he was not familiar; the testimony of Mr. Robert Cogins concerning litigation in Atlanta with which he was not vamiliar or directly concerned; and the testimony of Mrs. Emily Rays with regard to matters handled by her attorney with which she was not familiar, and all this being hearsay and, I believe, subject to our continuing objections from the beginning of this proceeding, that such testimony was not subject to proper cross examination, was hearsay and was otherwise objectionable and should not be admitted.

I respectfully move at this time that such testimony be stricken.

Exam. Reilly: I am not going to strike it.

My recollection of the testimony is not such for me to rule on it at this time with the exception of Mr. Derek Cartin.

During my conversations in writing the report and order, I will take your objections into consideration and treat it in the report.

As far as Mr. Trecartin is concerned, I will just withhold a ruling on that pending his appearance or non-appearance, and at the close of the protestant and intervenor's case, we will consider what shall be done with the testimony of Mr. Derek Cartin.

Mr. Zola: Thank you, Mr. Examiner.

Mr. Sarshik: The Department of Consumer Affairs would like to present its case at this time if that's the procedure.

Exam. Reilly: All right, you may proceed.

Will you raise your right hand.

ALICE MOREY

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sarshik) What is your position with the Department of Consumer Affairs of the City of New York?

A A consumer specialist.

Q Do you hold any degrees?

A A.B.A from Barnard College.

Q What was your experience when you telephoned the office of triple Aaacon at 147 West 42nd Street, New York City?

Mr. Kiel: Objection. Mr. Examiner, I object to this testimony, whatever it might be, with respect to a consumer specialist, which hasn't been indicated as involving any shipment that's at issue here, that has not been related to any of the provision of the commission's order in this proceeding, and I submit that the calling of witnesses who have not indicated any relationship to the specific questions which the commission has posed in its order initiating this investigation should not be heard.

Mr. Sarshik: I can't understand how there can be a ruling on that without seeing what she wants to state.

I believe it--I believe the testimony will have value to the commission.

Exam. Reilly: We will listen to how the testimony goes and I will withhold the ruling until I found out what she intends to testify to.

Q Again the question was: What was your experience when you telephoned the office of triple Aaacon?

Mr. Kiel: Objection, there was no foundation, Mr. Examiner, if we are going on a witch hunt, that's one thing, but I don't think the commission wants that, and I don't--that's all I have to say with respect to that objection.

Mr. Sarshik: I can rephrase the question if that's a problem.

Exam. Reilly: Why don't you lay a foundation before you proceed with the question.

Q Did you telephone the office of triple Aaacon?

Mr. Kiel: Objection, that's the same question.

Exam. Reilly: It isn't. This is a yes or no. It is not what did she find out.

A Yes, I did.

Q Where was that office located?

A West 42nd Street, New York City.

Q Do you remember the date of the telephone call?

A December 20, 1971.

Q What did you state at the time when you called?

Mr. Kiel: Objection.

Exam. Reilly: Overruled.

A I told the person who answered the phone that I was interested in shipping a car to Florida; I was told to hold on and was connected to a man who identified himself as Mr. Roberts.

I explained again to him that I wanted to ship a car to Florida. He asked me when I wanted to ship it. I told him that I wanted to be down in Florida by January 9th, which was a Sunday and the date for shipping was selected on Saturday then, January 8, 1972.

Mr. Kiel: Shipped when?

The Witness: Shipped January 8, 1972.

Q Do you remember what car it was that you stated you wanted shipped?

A It was a 1969 Saab, stick shift.

Q Did the man who identified himself at Mr. Roberts, as you said before, tell you how long the transport would take?

Mr. Kiel: Objection.

Exam. Reilly: Objection overruled.

A He told me that including the day of pickup, it would take 5 days.

Q Did he state when delivery of the car would occur?

Mr. Kiel: Objection.

Mr. Sarshik: It's a direct question, it's not leading at all.

Mr. Kiel: Mr. Examiner, I object to this testimony. It is a clear and apparent attemtp to entrap. This witness has not indicated that she intended to ship the car, and I submit that under the circumstances and in view of what has been indicated here, that this is a fictitious shipment which was never intended to occur and to burn this record with details of it, I think, is improper, and it is not relevant to any of the issues raised in the commission's order assigning this matter for investigation.

Mr. Sarshik: This commission has heard testimony about insurance coverage and elsewhere. The whole record is repeated with this information. Here's additional testimony by someone who is familiar with triple Aaacon to some extent prior to the call and to know what to listen for and I think we can get complete testimony which will help the commission.

Mr. Kiel: I submit that is exactly what I said, that this was not a bona fide attempt to secure a transportation service. It was merely an attempt to entrap. It occurred during the time that this proceeding was underway, and I submit that if the agency or the commission has done this, it would have been a terrible thing to reflect on its character and of course, they wouldn't.

I think that what we are involved herein is an order to investigage actions of the carrier prior to the time that the order was issued.

The order was issued long before this attempt and entrapment.

Exam. Reilly: Let me ask the witness a question.

Did you or did you not actually ship the car?

The Witness: No, I didn't.

Exam. Reilly: All right, I am going to strike all the testimony of the witness.

Mr. Sarshik: Could we understand the reason for that, sir?

Exam. Reilly: Well, I think that I accept the argument of counsel for the respondent.

Mr. Sarshik: Can I just state one or two words in the rebuttal? I think to use the word "entrapment," deals with criminal penalties.

Exam. Reilly: I might remind you, sir, this is an enforcement proceeding. Maybe it is not criminal, obviously, but quite obviously the respondent is going to suffer monetary damages in the event that this commission issues a cease and desist order or other actions which might be detrimental to the respondent.

Mr. Sarshik: I don't believe the textual use of the word "entrapment," applies here at all.

Exam. Reilly: I don't base this on entrapment. Did she or did she not experience any shipment with respect to Aaacon? She said she didn't. I am not interested in the testimony, in addition to which, the matters of insurance and other representations, what she would testify to, would be purely cumulative and that there is sufficient of that in the record.

Mr. Sarshik: Well. beyond the fact that we would obviousl' take exception to that ruling, that there is no sense continuing with this witness.

We would like to state at this time by way of making an offer of proof that if this witness would testify she would testify to the representation of the drivers selected by triple Aaacon. Her statements would include the fact that triple Aaacon tells people--

Mr. Kiel: Objection.

Exam Reilly: This is an offer of proof.

Mr. Kiel: I believe I have a right to object to an offer of proof and I move that the offer of proof be stricken. It shouldn't be in the record as an offer of proof. I believe I have a right to do so and I have done so in the past and I have had examiners who have refused to receive those offers of proofs.

Exam. Reilly: You may proceed.

Mr. Sarshik: She would testify concerning statements made by the drivers, the drivers are screened and schooled in high safety and, this was a statement made to her in the course of inquiries about what type of transportation she could expect; that Aaacon provides full insurance coverage for the entire trip and Aaacon is the primary insurer.

She would testify, she asked a question, in the event of an accident, would triple Aaacon pay for damage to the automobile, and the reply, and she would so testify, that we don't know about that, but we are the primary insurer.

She would testify concerning drivers, they are given a physical examination by one of their doctors, they are fingerprinted and photographed; the drivers provide two references which are shipped prior to the shipment, that the drivers are bonded for $7,500 each.

She would testify concerning delivery dates, and this is testimony which has been in dispute here at the I.C.C. hearing, which would be about delivery dates and whether such dates are guaranteed or not, whether she could expect delivery of a car on such and such a date.

And she would testify concerning what the status of the car's driver was, what representations are made and the import of that being whether such drivers were permanent employees of triple Aaacon or were, in fact, casual drivers who come in off the street, so to speak. That would be the offer of proof.

Exam. Reilly: The offer of proof is noted for the record.

Mr. Kiel: I object and ask that it be stricken.

Exam. Reilly: The objection is overruled.

The witness may be excused.

Mr. Sarshik: Before the department presents another witness, could we possibly have a short recess for 5 minutes?

Exam. Reilly: Yes.

(Recess taken.)

Exam. Reilly: The hearing will come to order.

RANDALL QUAYLE

was duly sworn and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Sarshik) Are you employed by the New York City

Department of Consumer Affairs?

A Yes.

Q What is your position with the department?

A My title is Compliance Agent.

Q Did you go to the office of triple Aaacon Auto Transport at 137 West 42nd Street?

A Yes, I did, on Tuesday, February 15th.

Q What was your purpose in going to the office?

Mr. Kiel: What year was that?

The Witness: 1972.

Q What was your purpose in going to the office of triple Aaacon?

Mr. Kiel: Objection.

Exam. Reilly: Let's find out his purpose.

A I posed as a prospective driver wanting to take a car to Florida to see in what way they would handle a prospective driver and what qualifications and what procedure they would go through for somebody to obtain a car from triple Aaacon.

Q Did you eventually sign out for a car, was a car selected for you to transport?

Mr. Kiel: Objection.

Mr. Sarshik: If I can say before the ruling, I would like to say their was a car selected and a transport was set to go beyond state lines.

Mr. Kiel: The witness clearly indicated he posed, that word is the word that he used and chose because that really was his purpose, to pose as a prospective driver.

It didn't relate to anything involved in this proceeding.

I submit it is the same type of evidence that Witness Morey attempted to establish.

Exam. Reilly: He may answer the question as to whether or not a car was selected, if that was the question.

Q Was a car selected for you to transport as a driver?

A Yes, it was.

Q Where was the car to go from, what point to what point?

Mr. Kiel: Objection.

Exam. Reilly: He may answer that question.

A I was to go from New York City leaving the following day, Wednesday, February 16th, to go to Columbia, South Carolina.

Q What was the date that you went to the triple Aaacon office?

A That was Tuesday, February 15, 1972.

Q Will you relate your experience when you went to the triple Aaacon office?

Mr. Kiel: Objection.

Mr. Examiner, this is the heart of the testimony of a person who posed as a prospective driver who clearly had no intention of doing what he posed to do nor did he do it.

Mr. Sarshik: The witness--

Exam. Reilly: Let's find out whether he did it or not.

Mr. Sarshik: The witness did not drive the automobile. He did make a deposit for the automobile, the car was assigned to him and he was scheduled to report. I believe that there would be everything but the shipment itself. I believe it is proper investigative technique. It is not any violation of any statute.

Mr. Kiel: This is clearly an attempt to entrap. It is an attempt by having people pose as something they are not and they have no intention of doing in an attempt to elicit information which is not pertinent to this proceeding. The proceeding is whether or not acts were performed by the Aaacon Company as it related to shipments, as it related to the handling of claims, and so on.

I submit that this testimony and the answer to this question would be improper and I move--and I object.

Mr. Sarshik: Why are the qualifications of a driver selected not pertinent to this hearing? He was a person selected as a driver by triple Aaacon. I think his qualifications and what standards he was suppose to meet would be relevant.

Exam. Reilly: I am not going to permit it.

Mr. Sarshik: May I make a statement, an offer of proof?

He would testify that he went to the triple Aaacon office at 137 West 42nd Street and stated that he wanted to drive an automobile to Florida, that he was told by the secretary near the door at that office that there was no automobile going to Florida in the near future. She told him at that time that there was an automobile that had to be driven to Columbia, South Carolina immediately. He told her that he would drive that automobile for them and offered to make a $5.00 deposit. She insisted he make a $10.00 deposit and he did so. She requested him to fill out certain papers and told him that he could take the car out the following morning, Wednesday, February 16, 1972; she told him that they would give him directions where to pick up the car, that it wasn't in New York City proper at that time, at least it wasn't at the triple Aaacon office; she gave him a printed form to fill out.

While the witness can't remember everything that was on the printed form, he did remember giving his name and address, telephone number, his parents name and address and telephone number including a ficticious address for his destination in Florida.

After completing the form, he spoke to a man who has identified himself as Mr. Gerard. The witness asked if he could bring two friends along to help him with the driving. He was told he was permitted three people in the car as long as the people signed the form. He was told his friends were not required to produce any references. He was told he had to leave an $80.00 deposit before leaving the car and the deposit would be returned at the point of destination.

He said that the man who identified himself as Mr. Gerard said that he could not give him any directions concerning the drive.

He was not screened or schooled in high safety or regulations at all.

He said if he wanted any additional information or maps he could go to a touring center to pick them up.

When asked if that was all, he replied everything was taken care of, all he had to do was come in the following morning at approximately 9:00 o'clock with the rest of the deposit money and go to the garage and pick up the car.

The interview lasted approximately 20 minutes, there was no mention of any physical examination or physical requirement at all.

He had a driver's license which he produced at that time which stated that he wears corrective lenses although at the time at triple Aaacon he didn't have the glasses on and no one asked him to take any test.

He was not asked to sign a surity bond. His fingerprints were not taken and he concluded the investigation by calling the people who were suppose to be listed as references. The people were not called between the time he was at triple

Aaacon and the time he was to pick up the car the following morning. These people were never telephoned or written to to check the references.

That would be basically the testimony prepared by this witness.

Exam. Reilly: Your offer of proof is noted for the record.

Mr. Kiel: I move to strike the offer of proof as being completely objectionable.

Exam. Reilly: Your motion is overruled.

Mr. Sarshik: You can step down.

Exam Reilly: Thank you.

Mr. Sarshik: That completes the case for the Department of Consumer Affairs.

Exam. Reilly: I think we are going to have a necessary recess. I don't see Mr. Johnson.

(Recess taken.)

Exam. Reilly: Back on the record.

Mr. Johnson: Auto Driveway will not put any evidence in, Mr. Examiner.

Exam. Reilly: Are you ready to proceed, Mr. Kiel?

Mr. Kiel: I am, Your Honor, but I would like--I am a little suprised that I have to do it right this moment. If I might get all the exhibits. We have many papers here. I thought we would do it after lunch.

Exam. Reilly. I should have waited 2 minutes before I called a recess.

(Recess taken.)

Exam. Reilly: On the record.

RALPH ZOLA

was duly sworn and testified as follows:

Mr. Kiel: Mr. Examiner, before this witness testifies, I neglected to request what disposition you propose to make of the testimony of Witness Trecartin.

I know that the case of the bureau and also the protestants has ended sort of abruptly.

In order for me to proceed, I think I should know that we have completed all of the evidence against us.

So I would ask that Mr. Browning either agree to the dismissal of and striking of the testimony of Trecartin or I will so move.

Mr. Browning: Mr. Examiner, I think you have already made a ruling on the--

Exam. Reilly: No, I didn't. If he is not here, I am going to make a ruling.

Mr. Browning: He is not here right now. Here is where we left it with him. I requested that he make himself available during this week sometime when he can come in.

Exam. Reilly: Unless--

Mr. Browning: To testify on cross examination, and he told me yesterday that he had to pick a jury this morning. Whether he has done that or not, I don't know. I can find out, but it will take me a couple of minutes.

If you are going to make a ruling on it right now, I would like to at least have the opportunity of contacting him with a view to having him come in right away.

Exam. Reilly: Unless Mr. Kiel agrees that he would cross examine the witness at some point in his presentation, I am going to make a ruling. If you want time to contact Mr. Trecartin I think you better do it.

Mr. Browning: Can we get a stipulation?

Mr. Kiel: I will agree that if you bring him in right after the lunch on recess, I will proceed now so that there will be no delay, but I will ask at that time--

Mr. Browning: I would like to make a phone call now, if I can?

Exam. Reilly: Why don't you make a phone call now.

(Recess taken.)

Exam. Reilly: On the record.

Mr. Kiel: Mr. Examiner, one of the problems in preparing for this testimony to be introduced now is that we are not certain exactly what all of the exhibits are. We are aware what the commission has indicated specifically in their order, what practices are requested, but their are many general phases, and the evidence that was introduced by the bureau is very--coveres a very wide ground, and I wonder if the bureau is prepared to advise us exactly what they see as the issues in this proceeding so that we can direct our testimony with respect to those issues.

Mr. Browning: Mr. Examiner, I have told them several times by letter what I recognize the issues to be and I am sure that they are fully aware what the issues are.

They have heard all of the testimony of all of the witnesses and they have had--most of the time they have had three attorneys here, the two principals of Aaacon and Mr. Kiel.

I am sure that they are fully aware of what the issues are in this proceeding which have been raised by the bureau of enforcement.

Exam. Reilly: I agree they should know what they are. There is an order. There has been a lot of testimohy. It is up to the respondent to meet the issues as set forth in the order and rebut the testimony if it is able to, and I don't know anything further that I can do or Mr. Browning can do to more fully advise them of what they feel are the decisions here.

DIRECT EXAMINATION

Q (By Mr. Kiel) Please give me your name and address.

A Ralph Zola. 21 Churchill Road, Englewood, New Jersey.

Q Are you employed by Aaacon Auto Transport Inc., and

Auto Trip USA, Inc?

A Yes.

Q Have you prepared a list of officers, directors and stockholders of those two companies?

A Yes, I have.

Mr. Kiel: I ask that that list be identified.

Exam. Reilly: Marked for identification as Exhibit No. 155.

(Applicant's Exhibit No. 155, Witness Zola, was marked for identification.)

Q Are you the Ralph Zola shown on Exhibit No. 155?

A Yes, I am.

Q What is the principal place of business of Aaacon Auto Transport?

A 147 West 42nd Street, New York City.

Q Is that building on a corner of 42nd Street and some on the street?

A 42nd Street and Broadway.

Q Does the building have two entrances and two addresses?

A Yes, it does.

Q Or three? Is there a Broadway address to that building?

A Yes, there is.

Q And what is that address?

A It is 1472 Broadway through 1480 Broadway.

Q How long have you been connected with Aaacon Auto

Transport?

A Since 1955.

Q With respect to Auto Trip USA, is that the applicant for the freight forwarder license which is still pending?

A Yes, it is.

Q Is that company inactive at the present time pending a determination of that proceeding?

A Yes, it is.

Q With respect to four Zolas shown as officers, directors and stockholders of Aaacon, are they all related?

A Yes, they are.

Q And what is the relationship?

A Irving and Helen are respectively the father and mother of Paul and Ralph.

Q What are your duties and responsibilities with Aaacon?

A I am the vice president and a treasurer--and the treasurer and my main function is in the areas of finance, claims and in addition I do, as do all officers, work in all areas.

Q Are you familiar with all of the activities and business of Aaacon, the respondent-applicant in one of proceedings?

A Yes, I am.

Q Would you please tell us what your background and education is?

A On the college level I have a B.S. in economics from the

Wharton School of Finance of the University of Pennsylvania, Pennsylvania, and a J.D. from the Harvard School.

Q Did you have any honors in school or did you receive any?

A I was first in my class in the Wharton School in accounting and I graduated cum laude from the Harvard School.

Q Prior to your association with Aaacon, did you work as a practicing attorney?

A Yes, I did.

Q For how long?

A Well, I must ammend that. It was actually during the time I was associated but prior to my full time association with Aaacon, which was in September of 1967 I was--September of '66, I am corrected, I was an attorney with the firm of Forsythe, McGovern, Pearson & Nash, and we were outside counsel for the American Stock Exchange.

Q Since you have been connected with Aaacon as a vice president and treasurer and director, have you continued to practice law?

A Yes, I have.

Q Are you a partner in a law firm?

A Yes, I am a partner in the firm of Zola & Zola.

Q With respect to that firm, do they also represent as clients Aaacon Auto Transport and Auto Trip USA, Inc?

A Yes, among many others..

Q In connection with your duties and activities for Aaacon and also as an attorney, have you familiarized yourself with law as it relates to automobile accidents in cargo complaints?

A Yes, I have tried to.

Q Was that done only with respect to the law and statutes and decisions in New York?

A No. My studies in that area are on a national and federal basis.

Q Have you done any work with respect to the problems of third party liability in automobile accident matters?

A Yes, I have.

Q Are you familiar with the certificate of public conveyance and necessity held by Aaacon?

A Yes, I am.

Q Have you familiarized yourself with the proceedings both in court and before the Interstate Commerce Commission which culminated in the issuance of that certificate of public conveyance and necessity?

A Yes, I have.

Q With respect to the basic and prime transportation service involving the transportation of used passenger automobiles, what type of drivers did your company use?

A Our company uses at the present time two types of drivers, those who denominated as casual drivers and those who are denomiated as professional drivers.

Q Was there a proceeding before the Interstate Commerce

Commission by the National Association of Automobile Transporters to have the commission adopt some rules with respect to which these two terms, casual and professional, could be specifically identified in a commission decision?

A Yes, they were.

Q Did the commission refuse to do it?

A Yes, it did.

Q Could you tell us what, in your mind, is a casual and what is a professional driver?

A A casual driver is one who is basically seeking some benefit for himself from the transportation of the vehicle which he is driving.

Whereas a professional driver is solely interested in the transportation of the vehicle would be remumeration.

Q Would you just tell me sir, do you maintain a tariff which is your tariff MF-ICC No. 6, which provides for rates on transportation when a casual driver is employed?

A Yes, we do.

Q Do you also maintain on file with the Interstate Commerce Commission a tariff MF-ICC No. 7, which provides for rates applicable on transportation service performed when the so-called professional drivers are used?

A Yes, sir.

Q In each of those tariffs, is there an explanation of what a casual driver is and a professional driver?

A Yes, and a more explicit explanation than the one I gave.

Q What is the basic difference insofar as the cost to the shipper is concerned if a casual or a professional driver is supplied?

A Basically, if a casual driver is supplied, the shipper is able to transport the vehicle at a--from what we can ascertain, at a very low cost, in fact, a cost that is the lowest which is of any form of transportation of the vehicle, including the shipper driving the vehicle himself, whereas when a professional driver is assigned to the vehicle, I believe our tariff provides that he is charged--the shipper is charged on a mileage basis, which would include all expenses and it becomes--based on a payment according to the number of miles shipped of the driver's expenses and all related expenses concerning the shipper.

Q Would the driver be compensated as an employee?

A The driver is then an employee of Aaacon and is so compensated.

Q How is your operation performed by casual drivers?

A The primary obligation is performed with casual drivers. I believe it was indicated in the commission's decision.

Q When a shipper contacts you and requests your service, do they have the option of having either a casual driver or a professional driver at their sole option?

A Yes.

Q Now, does your company maintain certain forms which it uses in the conduct of its business to expedite the handling of your business?

A Yes, we do.

Q Do these forms remain unchanged?

A No, they are subject to revisions.

Q And are they revised from time to time?

A Yes, they are.

Q What would be the reason why you would revise forms?

A There are basically two reasons. One would be if business practice and experience dictates that a change is required, and the second reason is that we are continually trying to ascertain, since this is a fairly new industry, the legal requirements, and we make the changes in our forms to comply with those requirements insofar as we are able to ascertain what they are from time to time and insofar as they change from time to time.

Q For example, in the type of form that is in this record time and time again and referred to as the bill of lading, is that prepared as a multi-part form?

A Yes, it is.

Q When you revise or modify or change that form, would you give me some indication as to the time, the lead time that's required to make such a change and get the printed forms back for distribution throughout the United States where you operate?

A The forms are reproduced in four original parts and there are very few companies that do that. It is done in South Carolina, I am not sure of the state in the south, and normally between the tendering of the form, the setting of the type, the proofs and the corrections returned to us, it would take two to three months, including distribution, and on occasions it takes up to six months.

Q Have you recently had a requirement to print bills of lading so that you can tell us how long it took in the last instance?

A Yes, I can.

Q How long did it take?

A In the last instance, about two or three months.

Q I show you a document and it is entitled, "Aaacon Auto Transport, Inc." It has a red heading and black printing in the body of the document. I ask you if you can tell us--do you recognize that document?

A Yes, I do.

Mr. Kiel: May I have it marked for identification?

Exam. Reilly: Marked for identification as Exhibit No. 156.

(Applicant's Exhibit No. 156, Witness Zola, was marked for identification.)

Q Would you tell us what Exhibit No. 156 is?

A Exhibit No. 156 is the current sales literature used by our company and is enclosed with our correspondence, our official correspondence with every inquiry made by a potential shipper.

Q Now, while we are at that, how do shippers learn of your services, if you know?

A They learn of our services in several ways. Through advertising, in newspapers, on the radio, the yellow pages, a lot of them come in through recommendations, and through active solicitation program maintained by our company.

Q With respect to the information contained in your advertising, do you consult with representatives of the Interstate Commerce Commission to assure that your advertising in the newspapers and magazines, is within what the representatives of the commission believe it should be?

A Yes, and we have made changes on several occasions at the suggestion of the commission.

Q Does the commission call you sometimes and tell you certain material in your advertising should be changed or modified?

A Yes, it does and it has.

Q Would you give us some typical examples of that?

A   Yes. Our advertising in the New York Times used to use the word "fully insured," and it was our understanding that this was based upon the fact that we met all insurance requirements of the Interstate Commerce Commission and had filed with the the appropriate certificates through our insurance carriers.

We were then--we were called by Mr. Len Schoer, who is the chief of the section of insurances, I believe, I think that's his title, and he discussed with me on quite a cordial basis the implications of those words and the fact that there are exceptions to carrier liability which inured to the benefit of the insurer of carriers, and there were therefor occurrences under which the cargo or the liability of an individual might not be covered by Aaacon's insurance and he suggested that we delete the word "fully," in front of insuraned, and we did, and at that time we stared to spell out more specifically the actual insurance coverage rather than leave just the word "insured," in, which we felt was too general.

Q   Have you also discussed similar matters with the local representatives of the commission in New York?

A   Yes, we have.

Q   Have you made changes in your advertising as they suggested from time to time?

A   Yes, we have.

Q In connection with your relationship with Mr. Schoer, have you received on the advise and opinion from him with respect to certain of your responsibilities and obligations to the public?

A Yes, we have.

Q Have you met and discussed these with him to the best of your ability?

A Yes, we have, on several occasions.

Q Have you ever failed to follow the requests or recommendations of any representative of the commission with respect to your advertising?

Mr. Browning: I object. These are very leading questions and this is very general evidence that is being adduced. Unless we tie it down to specifics, it means nothing.

Exam. Reilly: I think you should rephrase the question, Mr. Kiel.

Q Will you tell me, sir, the occasions when you have not followed the suggestions or recommendations of representatives of the commission with respect to your advertising?

A With respect to our advertising, we have followed every suggestion ever tendered to us by the Interstate Commerce Commission with respect to changes in our advertising and holding out with regard to the services and obligations we provide and we have on other occasions I might add, sought to ascertain the wishes of the commission. We have not always been wholly successful but whenever we happen to find out what those wishes were, we comply voluntarily.

Q When you send the paper which is identified as Exhibit No. 156 to a person calling you about using your service for the movement of their automobile, do you send them any other documents?

A Yes, we do.

Q I show you a docjment entitled, "Freight Bill, Owner's Copy," which is printed in blue ink and ask you to identify that, please.

A That is a copy of what we send to customers who make inquiry about our service--to potential customers who make inquiry about our service.

Mr. Kiel: May I have that identified?

Exam. Reilly: Marked for identification as Exhibit No. 157.

(Applicant's Exhibit No. 157,
Witness Zola, was marked for
identification.)

Mr. Kiel: Along with that document, Exhibit No. 157, do you send a pink sheet, which I show you?

The Witness: Yes, we do.

Mr. Kiel: Mr. Examiner, may I ask that be marked for identification?

Exam. Reilly: The freight bill order form is marked for identification as Exhibit 158.

(Applicant's Exhibit No. 158,
Witness Zola, was marked for
identification.)

Q When was Exhibit Nos. 157 and 158 prepared?

A They were prepared approximately the week of January 27th.

Mr. Browning: Mr. Examiner, I would like to get the date, the year.

The Witness: 1972, I am sorry.

Q What were the basic changes that are in Exhibit Nos. 157 and 158 that weren't previously contained in similar documents that you used?

A The major changes are in the final part of the document which states, "Subject to and incorporating all provisions of carrier's bill of lading," that had been in our earlier document to which we added the phrase, "which is reproduced on reverse side hereof," and then on the reverse side, we have reproduced in total the entire bill of lading agreement, as is used by Aaacon Auto Transport, Inc.

Q Why did you make this modification as shown in Exhibit Nos. 157 and 158?

A Quite frankly, we had testimony by witnesses in this proceeding, some of whom alleged that they were not familiar with the provisions of our bill of lading at the time they contracted with our company.

These allegations were not known to us earlier and this we felt was the simplest way to make sure that the first time we contact an individual, and I might add that these are mailed out always with the sales literature as the first contact that Aaacon makes with any prospective shipper, that he has in front of him the agreement, and since the white copy is retained at all times by the owner, he has a duplicate original of what the bill of lading is and he has an ample opportunity prior to contracting with us to know all of the obligations he is incurring.

Q With respect to Exhibit No. 156, would you briefly indicate what changes, if any, were made in that exhibit and how recently?

A The changes in Exhibit No. 156 have been made over a number of years. At the end of the 1st paragraph, the next to the last line says, "the transportation of your car is fully supervised." That phrase used to be, "fully guaranteed." Now, it was our understanding that we meant by that phrase that if a car is drivable, we will get it there even if we have to put on a half a dozen drivers.

Some people, however, confused that phrase "fully guaranteed," that if the car broke down we would put it in a truck and get it to them.

We eliminated that representation and indicated that the transportation is supervised. By that we mean we have over

70 offices from coast-to-coast and we are able to redispatch cars that suffer mechanical breakdowns after they are repaired.

The next paragraph indicates the change which I mentioned earliers in my discussions with Mr. Schoer.

We originally stated that the car was fully insured. At his suggestion, we have spelled out the type of insurance we have, that is to say, that there is liability insurance for bodily injury and property damage. And then we indicate that the collision coverage of the vehicle has no deductible amounts.

Let me see what other changes there are.

The next paragraph was changed as a sales matter from a prior literature but it just emphasizes the fact that we have a lot of offices.

I think that would be all of the major changes on Exhibit No. 156.

Q In the conduct of your business, does your company use a document entitled, "Bill of Lading Agreement"?

A Yes, we do.

Q I show you a copy of a blank agreement No. H11222, which I have marked for identification, and I ask you, sir, is that the bill of lading form that you now use?

A Yes, it is, sir.

Q Is that a four part form?

A Yes, this is the quadruplicate form we discussed.

Q The first is a driver's copy; the second a car owner's; the third a directional copy; and the fourth a home office copy?

A Yes.

Mr. Kiel: May I ask that that duplicate be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 159.

(Applicant's Exhibit No. 159, Witness Zola, was marked for identification.)

A I might note, Mr. Kiel, that the bill of lading, Exhibit No. 159, is in all respects similar to the freight bill with the bill of lading agreement reproduced on the reverse side of the freight bill.

Q That's Exhibit Nos. 157 and 158?

A Yes. With the exception of the fact that the home office quadruplicate copy of Exhibit 159, that's the green copy, has on it material for inter-office use with regard to driver payment, which is reproduced on Exhibit No. 158. That's to say, that the driver has this day deposited as a bond deposit, and he signs his name.

Q That's in the lower right-hand corner where I have marked the word "voided," on it.

A Yes, sir.

Mr. Browning: I don't have that.

The Witness: You would find it on the freight bill, Mr. Browning.

Q Mr. Zola, did you attend this hearing and hear the testimony of the various witnesses who have preceded you?

A Yes, I have, sir.

Q In connection with the bill of lading which is Exhibit No. 159, when was that modified?

A It has been subject to modification over the past 3 years. This bill of lading was actually drafted, I believe, at the beginning of November.

Q Of what year?

A 1971.

Q After these hearings began?

A Yes, sir.

Q Prior to the initiation of these hearings, did you ever discuss with any representatives of the commission the terms and provisions of the bill of lading agreement that you then used?

A Yes, sir.

Q Would you just briefly tell us about such discussions? Whom did you discuss these matters with?

A I discussed the matters with, among others, Mr. Browning of the Bureau of Enforcement, and Mr. Schoer, who I previousl identified.

Q Did another representative of your company meet with other representatives of the Bureau of Enforcement with respect to matters contained in your bill of lading?

A Yes.

Q Did your company make changes in Exhibit No. 159 which make it somewhat changed and different than the prior bill of lading agreement that you used?

A Yes. I wish to correct--I hesitated before on the date. This bill of lading was redrafted at the beginning of December, 1971, not November, and the answer to your question is yes.

Q All right.

Now, would you review with me point-by-point the changes made in the paragraph which contains--strike that.

By the way, what is the type size of the--

A Mr. Kiel, I must interrupt. The bill of lading which I have been given as Exhibit 159 is not--

Q Is not your new bill of lading?

A Is not our new bill of lading. If I may look at your copy. Maybe I just received a bad copy. I wish to explain that.

When it appeared yesterday that we were going to testify, I asked someone to bring down some bills of lading and one of our office employees did. He apparently brought down copies of old bills of lading which have been discontinued. The new bill of lading series marked J, and the bill of lading series which is Exhibit No. 159 is marked H, the J bill of lading is reproduced on the reverse side of the freight bill and after lunch I will attempt to have copies of the proper bill of lading made available.

Q With respect to Exhibit No. 159, it is the same document that you used prior to the revision that you have been discussing.

A Yes, this was the document used prior to the revision which was made in December.

Q And it is different from the material on the back of Exhibit No. 157 and No. 158.

A That's correct.

Q The material on the back of No. 157 and No. 158 is the form of bill of lading you now use?

A Yes, in slightly reduced form.

Q With respect to the type size of the bill of lading which you now use, what is the printing of the--and I am looking at the back of Exhibit No. 158, the paragraph which starts, "Shipper understands"?

A That is in ten point type.

Mr. Browning: Where is that?

Mr. Kiel: This, "Shipper understands."

Mr. Browning: Okay.

Q Has there come to your attention recently a requirement in New York City with respect to the use of any particular size type to be of such size as would be properly readable and clear for purposes such as you have here?

A Yes. The Bureau of Consumer Affairs of the City of New York has recently set forth requirements that provisions of financing agreements which might be--might contain unusuale provisions with regard to sellers be in ten point type. Our bill of lading--that's a proposed rule which hasn't gone into effect.

Our bill of lading has been in ten point type for over two and a half years.

Q I show you a copy of the ad and--newspaper article and ask you if that's an article that you clipped out of the paper?

A Yes.

Q Do you recall the paper?

A It was in the New York Times of approximately two weeks ago.

Mr. Kiel: May I ask that that article be marked for identification?

Exam. Reilly: Marked for identification as Exhibit No. 160.

(Applicant's Exhibit No. 160,
Witness Zola, was marked for
identification.)

Mr. Kiel: So that the record is absolutely clear, the printing of the paragraph on the back of Exhibit No. 158 is not ten point type.

The Witness: That is correct. As I stated, it is slightly reduced.

Q But your bill of lading is?

A Ten point type. The back of the freight bill is nine or eight point type, bold.

Q Would for reference purpose at least, the size of type on the paragraph starting "shipper guarantees," on Exhibit No. 159 be the ten point type? It's your old bill of lading.

A Yes.

Q And you will get us a copy of the new one before your testimony is completed?

A Yes, we are ordering it now.

Q Will you point out, sir, and I will appreciate it if you would go right down the line in the paragraph beginning "shipper understands," on the back of Exhibit 158, the changes that you have made in that provision?

A Yes. The first sentence reads, "Shipper understands and agrees that the shipper is responsible to tender the vehicle to the carrier in good operating and mechanical condition."

This is pursuant to our tariff rule and replaced a phrase in the prior bill of lading that the shipper guarantees the operating and mechanical condition and assumes all responsibility for damage and all liabilities arising therefrom.

Q Why did you make the change?

A I made the change, one, in order to make it conform to the tariff provision, and secondly, because it sets forth what I believe to be the true understanding of the parties as well as what is the federal law.

We didn't wish to imply in any way that the shipper was extending by contractual obligations, undertaking by contractual obligations any obligation that wasn't his under federal and state common law.

Q Would you go to the next sentence beginning with, "Shipper is solely responsible."

A Yes.

The next sentence had originally read that, "regardless of cause, carrier shall not be liabile for any damages or consequences--" no, excuse me. That next sentence which states in the new bill of lading, "Shipper is solely responsible for all damages and liabilities arising from inherent mechanical or operational vice or defect in the vechicle in the absence of carrier fault."

Again reflects federal law, as we have been able to ascertain it. We have added in the phrase, "in the absence of carrier fault." Which, as we understand it, was reflected in the uniform bill of lading and is reflected in the decision and have eliminated the phrase at the end of the first sentence in the old bill of lading, Exhibit No. 159, "Assumes all responsibilities for damage and all liabilities arising therefrom," which omitted the phrase, "in the absence of carrier fault."

Q Have their been federal appellate decision which set forth the carrier's responsibility or lack of responsibility with respect to the inherent mechanical or operational vice or defect?

A Yes.

Q And we have certified copies of those decision which will be made available here later?

A Yes.

In addition, this reflects the old federal law, I mean the continuing federal law in the Hoover Moter Express Case.

Q Was that a federal case.

A That is a federal case.

Q Breifly, what did that cover?

A That case stated--actually that case went quite a bit farther than the contractual provision and stated that a carrier is not responsible for the inherent structure of the cargo being shipped that might be damaged in transit. In that case, the court went on to say, in spite of the vibrations that are normal and attendant in trucking. The court felt that that was part of the understanding of a shipper and carrier as to what's going to happen and the carrier was not responsible for the inherent defect in the structure of the cargo which was electrical equipment.

Q In this instance, the cargo that you transport, do you use any truck or other device to carry the cargo that you transport?

A No, sir. We operate the cargo by driving it. And in that way, I think, our transportation service is unique in the entire realm of transportation.

Q Would you go on to the next sentence, please?

A The next sentence--

Q Before you do, may I withdraw that question just one moment, please.

Have you read the decision of the Interstate Commerce Commission at 340 ICC 515?

A Yes, I have.

Q I refer you to the last paragraph on page 525 of that decision. The second sentence, which begins with the words, "Carriers are not liable."

A The next to the last paragraph, second sentence? Yes, I have that marked.

Q In your opinion, did the provision of your bill of lading conform to the statement of the commission with respect to the non-liability of the carriers in situations of the type that you have provided for in your bill of lading form?

A Not only--yes, and not only conforms, but it spells it out so the shipper is put on some sort of notice as to what obligations he has and what obligations the carrier has.

Q Would you go to the next sentence beginning with "Carrier and shipper agree."

A Yes.

That was changed again to read, "Carrier and shipper--"

Q We can all read it. Would you explain it, please?

A Yes. My research as to carrier liability included the question of special damages, which apparently is quite a difficult question.

As I understand the federal law after thorough research, a carrier is not liabile for special damage occuring during a shipment unless he has prior notice of them, that prior to the shipment, and accedes to them. In our old bill of lading, we excluded liability for special damages and specifically special damages such as car rentals.

In our new bill of lading we merely require prior notice of special damages so that we can take proper action to protect ourselves with regard to the length of time of transportation.

I might note that the standard measure of damages as outlined in the commission's report at 340 ICC would be the depreciation of the vehicle, that is to say, if a vehicle were five days late beyond a reasonable date, it would be the depreciation of five days, however, car rentals are normally a much greater amount of money and sometimes people have three and four cars in the family and don't contemplate car rentals and at other times they are absolutely dependent on a single automobile and in this matter we are able to inform ourselves and inform the shipper as to what the situation is.

Q You give them a choice here if they notify you as to special damages?

A Yes.

Q On the uniform bill of lading which provides various and sundry things, many of which are not applicable to trucking such as the Antwerp agreement and the railroads not being responsible to move freight on a particular train or schedule, in your opinion, is this substantially--is this for the same purpose?

A Yes, as applied to motor carriers.

Q And for the same reason, sir, do you have anything else on your bill of lading with respect to the expected arrival of the vehicle at destination?

A Yes, in block bold letters at the top of the bill of lading, we put the word "estimated," above the due date.

The purpose of putting in a due date all all is to have a clear record of driver and owner expectations as to what constitutes a reasonable time.

In other words, to avoid holding out to a shipper as to the time involved, we put the word "estimated," in there.

Q Did your company have a tariff provision which permits a shipper by paying for a special service to get a more definite commitment with respect to the handling which should provide a faster and more expedited delivery?

A Yes, he has that both in our professional tariff and our expedited service provisions.

Q Would you go to the next sentence beginning with the word, "Shipper undersands and agrees"?

A Yes.

In that sentence, we have added--strike that.

We have notified and made as part of your agreement that casual drivers are going to be used.

While the commission has given us authority to transport vehicles by casual drivers and where we have never made in writing any representation to the contrary, we feel that this way there can be no doubt in a shipper's mind that he is getting what has been previously defined as a casual driver, and we have thereafter the words "casual drivers who are independent contractors."

Now, that phrase should be explained, because it has been by implication raised at this proceeding.

Q Would you explain it, please?

A The independent contractor status of the driver protects the car owner from the driver making a claim for bodily injury damages under workmen's compensation. We have had discussions with regard to that. While we have always maintained that we are responsible for the actions of our drivers whether they are casual or professional, the employment status with regard to the shipper and with regard to Aaacon is of more than the impression to the shipping public.

Q Has the amount of the repairs been changed from your prior bill of lading agreement from 20 to $25.00?

A Yes, the next sentence indicates that the amount has been changed in accordance with what had always been our tariff provision. The prior provision for $20 gave the shipper a little additional cushion of notice. However, it was incorrect, and even though it didn't enure to the shipper's benefit, the procedure notice provision with regard to the $25.00 cut off is now reflected in our bill of lading.

Q In any event, this change was made when it became clear that this should be spelled out specifically?

A Yes.

Q With respect to the next paragraph, the sentence beginning, "In the event," would you explain that, please?

A Yes.

That explanation is a twofold matter. We are required under federal law to collect the entire tariff within seven days. That's also part of our tariff provision. We used to have an operation whereby the shipper and the driver at destination could adjust between themselves, the two parties who are actual witnesses in most instances to the condition of the car before transportation and after transportation, on the basis of a mutual confrontation and examination on the spot to make a determination of the value of damages and for the shipper to retain from the freight fees--the freight charges due the carrier any portion of that freight charge due which would cover the shipper for fair damages to the vehicle, and this amount would not be paid to the driver.

This procedure, we felt, was fair, but it permitted a shipper not to milk a claim and not to defraud either the driver or our company, because he had to face the driver.

However, the commission has pointed out to us the fact that it might possibly constitute the settlement of a claim without carrier investigation. As a result, we have terminated that practice and now require in the event of any damage to a vehicle that no part of the final freight payment be made to the driver but that the entire freight payment be forwarded to the carrier regardless of the size of the claim.

Additionally, Mr. Schoer had taken exception to our earliest bill of lading provision which stated that payment to the driver of the final freight bill charge was a waiver of the claims of the carrier.

Q Of the shipper?

A I am sorry, of the shipper. He stated to us that we might not use that because it would violate Section 2011 and he suggested to us that we say that it constituted evidence.

We had put in our prior bill of lading the fact that it was conclusive evidence, meaning that it created a prima facia case. However, in light of the issues that have been raised by the commission in this hearing, we felt that in order to eliminate any question of whether or not it is conclusive or inconclusive, we eliminated that word entirely and just state that the payment constitutes evidence, that is to say it constitutes an indication of a satisfactory delivery and does not exculpate the carrier from either the settlement of any claim or the investigation thereof.

Q When the original application was heard and your original certificate was issued, was the commission advised that the driver would be collecting the final portion of the freight charges and is it referred to by the commission in its discussion?

A Yes. Moreover, on the original application, the entire method by which the freight charges were withheld and settlement made on a confrontation or face-to-face basis between the driver and the shipper was spelled out in full at that time.

Q Have you familiarized yourself with the shipping documents used by other companies in the same type of business as you are?

A I am intimately familiar with them.

Q Do they provide for the same type of payment to the driver upon delivery?

A Yes, the operation of payment and settlement with the driver that I had outlined had been our prior procedure is currently used by all other drieways to the best of my knowledge. I may just add one point to fill out the picture.

Since these drivers are casual drivers and not employees of our company, we are not in a position--strike that.

The drivers have no incentive on the basis of future employment to hide damage, that's to say, they are not going to be penalized. We keep no record of damage to a car done by a driver nor would that be an excuse for his non use as a casual driver in the future.

There are provisions that we have for not using a driver again if he acts in an improper manner. But the whole tenor of this provision is that the driver is not going to, as indicated in the ICC report at 340, as indicated is the practice with some trucking companies, create a false report or try and hide the damage to protect his record, because he has no record with us to protect.

Q In that respect, in connection with these drivers, do exchange information with other carriers regarding certain persons who have been found not to be suitable for casual driving of automobiles?

A Yes, we do. And we maintain in each of our offices a list of names, social security numbers and drivers' licenses and on the occasion, on the evidence to identify them, of these individuals, and we attempt to weed out these persons, and also this information is made available to the Federal Bureau of Investigation, which has on many occasions requested information from our files which are often more extensive than their own with regard to the individuals and what has happened.

For instance, we always have fingerpints and photographs of them, and sometimes the FBI didn't, and we cooperate as fully as we can.

Q With respect to the document, would you go on to the next sentence, starting "Should carrier be liable."

A Yes.

That sentence is taken directly from the uniform bill of lading, Section 1B, and is reproduced totally.

Q Does your company hold from the Interstate Commerce Commission a released rates order?

A Mr. Kiel--

Q I am sorry.

A (continuing) --if you will permit me. I would like to compare that with the sentence that we used to have. And that sentence stated that "The agreement shall not operate as a waiver or avoidance of any contract of indemnity which shipper effected prior hereto or the obligation hereunder which shall dissolve upon the indemnitor and said contract of indemnity shall be and reamin in full force and effect."

In our meeting with Mr. Browning, in November of 1971, the question was raised as to the--excuse me, it was November 1970, I beg your pardon. The question was raised as to the meaning of that provision. That provision states what is the general insurance law. That is to say, insurance policies for collision and liability protecting a shipper car owner very often have exculpatory clause with regard to contracting with third parties. The purpose of our including this language is to make sure that our contract cannot be classified by the owner's insurance company as one which exclupates them. It in no way is meant to nor does the language in any way create a question of whose insurance is primary and whose insurance is secondary. It states that as to those matters in which the car owner's insurance is primary, that is, which dissolve upon them primarily, it shall remain in full force and effect. And the sole purpose of that provision was to protect car owners.

Q With **respect** to the next sentence, does your company still hold a released rates order which by its terms permits you to contract with the shipper whereby the shipper may agree to a released value of the property which is carried in motor vehicle? Do you still hold a released rate order?

A Yes, and I might add that at all times relevant to all of the shipments presented in this proceeding such released rates order was in effect and was part of our tariff and part of our bill of lading.

Q If the shipper avails himself of the right to declare a higher value than $50, is there an additional charge?

A There is an additional charge provided for our tariff, provided for in our tariff.

Q Then if he ships based on a released value, would it follow that there is a lesser charge than he would pay for the full value?

A Yes, sir.

Q Would you go to the next sentence? "In any event," the sentence begins. Is that also part of the released order?

A Yes, the commission, however did not require us as part of the released rates order.to print that, but we feel that in order to inform the shipper as to the ultimate maximum liability of [illegible] carrier in any event whether or not he lists and values the baggage and pays the additional charges, he should be notified. Although we are not required to so notify in our bill of lading.

Q Would you go to the next sentence which starts, "All terms and conditions." Is that a change or is that substantially the same as what you did in the past?

A Bear with me for a moment. I want to examine it carefully.

The next sentence, sentence 11, is part of our tariff and is reproduced in the bill of lading and incorporates by reference pursuant to the ICC suggestion which was incorporated in our tariff, incorporates by reference the terms and conditions of the uniform bill of lading, uniform straight bill of lading, which are reproduced in our tariff and are available to the shipper and driver. .

Q Does your tariff, if I have it, revised page 8 in MF-ICC No. 6 Rule 21, provide a bill of lading which by reference makes a part thereof all the terms and conditions of the uniform straight bill of lading may be used?

A Yes, sir, and the bill of lading that we use now and have used in the past by reference makes a part thereof the uniform straight bill of lading.

Q Would you go to the next sentence beginning "Any notice required."

A Yes.

Q What is the reason for that?

A Well, the reason for that sentence is that the shipper is required under federal law as reflected in the ICC's original report and its no proposed rules, to file with the carrier an original claim for damages before the carrier may voluntarily make any payment and so we notify him prior to the shipment that in the event of a claim, he has to send us an original claim.

Q In any event, was this provision intended to be in your bill of lading before the recent decision of the commission at 340 ICC came out?

A That provision has been in our bill of lading for the last two and a half to four years. I don't know just how far back it goes.

Q With respect to the next sentence, "The shipper shall take all steps necessary," what is the purpose of that?

A The purpose of that is to inform the shipper before he contracts with us of his duty to mitigate damages. It is reflected in the decision of the commission in 340 ICC, which we have referred to and the rules recently promulgated by the commission thereunder, as was the previous sentence, and it is also required, by the way, by federal law concerning the measure of damages that a shipper may collect.

Q At page 570 of the commission's decisions, did the commission indicate in the first full paragraph that it's a well established principle of law that there is a duty to mitigate damages?

A Yes, the language is a well established principle of law. I might add in the commission's--

Q Before you go to that, may I ask you one other question.

With respect to 576, page 576, the first paragraph, does the commission indicate their position with respect to shippers and consignees who reject property which is damaged in transit or who ignore their duty to mitigate damages?

A Yes, they refer to the irresponsibility and indifferent attitude of some shippers and consignees who indiscriminately make rejections.

Q You were going to refer to the order of the commission coming out of that proceeding.

A Yes, sir.

The minimum filing requirements stated in Appendix E, which is now Section 1005.1, I believe, of the regulations of the commission, states that the minimum filing requirement shall require an original claim from the claimant sufficient to identify the loss, assert liability, and I am summarizing, and, three, making--I am quoting now, "Making claim for the payment of a specified or determinable amount of money," and that in Section C thereof, they indicate that appraisal reports, notations of damages on bills of ladings or inspection reports issued by carriers shall not constitute a sufficent original nor in Section D will a claim for an uncertain amount be considered a sufficient cliam. And finally, and, I think, this is most important in this proceeding, in Section E, they state that on the claims for--

that is to say, similar claims on the same shipment are wrongful and cannot be paid and that conflicting and overlapping claims shall require substantiation on the part of each claimant.

Q With respect to that Appendix E in Section 1005.6, does the decision set forth what is required now for the handling of salvaged and merchandise or freight that is damaged in transit?

A Yes, it does.

Q Do you know of any other decision such as this where the commission has given you information--

A Excuse me, I can't hear you.

Q Do you know of any other decision of the commission where the commission has given you a formal ruling with respect to what is expected of you in the handling and processing of claims?

A Any other decision?

Q Yes, before the decision 340 ICC.

A No, sir. I might add in that regard, we have undertaken several inquiries from the commission in order to make a reasonable determination of what is required of us and of other carriers.

Q Have you familiarized yourself with the requirements set forth by the commission in Appendix E?

A Yes, sir.

Q Insofar as your company is concerned, do they appear just and reasonable?

A Yes.

Q Can you comply with them?

A Yes, sir.

Q Have you undertaken to assure that your company is going to process its claims in the manner required by the Appendix E?

A Yes, sir. And I might add that I believe further testimony will show that prior to this report coming out, almost every provision of this report was followed by our company.

Q Now, go to the next sentence on your Exhibit 158, "Driver shall be responsible," what is the purpose of that, please?

A I am sorry, you are just a little ahead of me. Since our bill of lading agreement actually constitutes tripartite contract between the shipper, us, and the driver, we make clear in no uncertain terms that any traffic tickets incurred by the driver or any violations of law during the transportation will be his responsibility. This is in line with the same thinking and reasoning that has the phrase, "Independent contractor," referred to earlier.

I might add, just to make very clear for the record, that in no provision of that sentence or any other sentence do we, does Aaacon state that it shall not be additionally liable, but we want to make sure that the driver understands that he is the one whose primarily liable for his violations of law.

Q If a driver should get a traffic summons and--if through some act of the driver a traffic summons should be issued against the owner of the vehicle, for example, and the driver cannot be secured to pay the amount of the summons, what does your company see its responsibility to be in that instance, since this sentence is as provided in this document?

A Our responsibility is to pay those violations. Actually I might say technically our responsibilities to pay the owner for the violations which have been incurred because it is a measure of damage. What we normally do is to just pay the traffic tickets and then see if we can get the driver to reimburse us.

Q Would you go to the next sentence, "Shipper agrees," and explain that?

A Yes; our tariff provided--strike that.

I am sorry.

The rules of the Interstate Commerce Commission provided that non-paying person might accompany a driver of an automobile, and one of those rules has been reproduced and is part of our exhibits. However, although the right was there, we felt, after listening to some of the testimony in these proceedings, that it would be of assistance to the owner to know this, so we have spelled out to the car owning shipper that the driver may occasionally be accompanied by other authorized but non-paying persons. That is to say they are not paying transportation charges to us, to the assigned driver or to the shipper, and no one drives a car unless he is a screened authorized driver.

Q With respect to an authorized person, do you in the course of your business authorize in writing persons to ride with drivers who are transporting automobiles?

A Yes, sir.

Q With respect to the operations and documents of carriers who engage in a similar business as you are engaged, do you know what they do?

A Their practice is the same. I might add for clarification, that the persons who are permitted to accompany the driver, whether as driver's or as non-paying authorized passenger, cannot be casual strangers with no relationship whatsoever to the driver. The typical example would be a husband taking his wife or two friends going along who know each other prior to their coming to our office.

Our offices all over the country have a specific rule that it is not to be a meeting place, nor do we ever on our own part suggest or encourage that two people or permit two people who do not know each other to ride together in an automobile.

Q Would you go to the next sentence, "Driver and shipper concent."

A The next sentence reflects the service of process provision recently adopted by the federal courts and those that have been in effect in the states' courts in practically every state in the union for the last 15 years since the restriction of the state codes of civil procedure.

The purpose of this is to permit the carrier to make collection of charges.

We have an oblication under federal law, and it has been pointed out by the commission on numerous occasions to collect charges, because of the inexpensive nature of the transportation that we afford to the public, it would be impossible for us to obtain local counsel and go through a whole trial, wherever the shipper may be, for freight charges for which the shipper refuses to make proper payment.

In addition, if a driver gets a 10 or $15.00 ticket, we cannot hire counsel in, for instance, California to pursue the driver because it would end up costing us more in legal fees than the small amount of these claims are worth, and this provides a practical, inexpensive method for obtaining process for the collection of these amounts.

Q Has this provision been challenged in any court action?

A Yes, sir, in both state and federal court actions.

Q What has been the determination in those actions?

A The determination in those actions is that the provision has been upheld as proper and lawful.

Q Now, will you have reference to those decisions later in your testimony?

A Yes, I will.

Q With respect to the next sentence, "This bill of lading agreement supersedes," and so on, would you explain that briefly?

A Just two more observations on that. That provision is permissive and not mandatory, that is to say, the process may be had by any other lawful method including personal service pursuant to every state and federal statute that obtains with regard to service or process.

And secondly, it is our feeling that inasmuch as the commission has held at this time in 340 ICC that they do not wish to undertake the question of whether or not attorneys' feets on behalf of either shippers or carriers constitute a lawful part of the damages of those parties in litigation, we feel that this eliminates the question of excessive attorneys' fees.

Q With respect to the next sentence, would you just briefly explain that, please, "This bill of lading agreement supersedes"?

A In order to make sure there is uniformity of obligation on the part of the shipper and the part of the carrier and that there is no favoritism shown to any shipper or consideration granted, we state that the agreement that is incorporated in the bill of lading agreement is the entire agreement and cannot be arbitrarily changed by, for instance, an employee of Aaacon's in San Francisco or Seattle or anywhere else; that every shipper coming to Aaacon gets the exact same agreement to sign and has the same rights and obligation.

Mr. Kiel: The balance of the sentences relate to claims and controversies and the use of arbitration and for the information of the others we will deal with that at one time later in the testimony as a part of a complete picture of that procedure.

So I would like now to leave this document, except I would like to ask the witness one question.

Q Is it necessary to spell out in ten point type on the bill of lading all of the rights and responsibilities of the shipper which may be contained in your tariff or in a bill of lading which you make reference to?

A No, sir. The federal law and the decision with regard to that is that the shipper is presumed to have examined our tariff at either our location or at the commission headquarters in Washington, D.C.

While congress in its wisdom has made this provision, I think it is unrealistic to expect them to do so, and our purpose has been continually, from the inception of our operation, to try and notify the shipping public as to where our obligations end, where their obligations begin; where our rights end and where their rights begin. And we think that through continuous changing of this, as we have from time-to-time received guidelines, we have attempted to do so.

Q I show you an abstract of part 1051 of title 49 of the code of federal regulations with respect to the bill of lading information required by the Interstate Commerce Commission's regulations. Are you familiar with that?

A Yes, sir.

Mr. Kiel: I ask that that document be marked for identification.

(Applicant's Exhibit 161,
Witness Zola, was marked for
identification.)

Q Does the bill of lading which you use show on the face thereof the names of the consignor and the consignee?

A Yes, sir.

Q Does it show the points of orgin and destination?

A Yes, sir.

Q Does it describe the vehicle transported?

A Yes, sir.

Q Do you keep a copy of this bill of lading form in your records as required by the commission?

A Yes, sir. And the commission has on many occasions examined our bill of lading forms on all of them.

Q Did you--

A I might add, if I may, that the bill of lading that we have changed from time to time has been voluntarily given over to different departments of the commission as requested by them on a continuing basis.

Q In the decision of the commission at 340 ICC, is there any reference to what may be in a bill of lading and what may not be in a bill of lading as it effects the bill of lading that you use?

A Yes, sir, there is a reference to that.

Q Is there any prohibition in that decision as far as your understanding of the decision is concerned which would not permit the document, bill of lading, which your company uses and is Exhibit No. 148?

A No, sir. In fact, the parts of the bill of lading--the language of the commission is that they would encourage them and that would be specifically the arbitration provision.

Q With respect to the drivers of your company, have you prepared certain documents to reflect the--

Exam. Reilly: Are you finished with the bill of lading portion?

Mr. Kiel: Yes.

Exam. Reilly: Let's take a recess. We will recess until 2:00 o'clock.

(Luncheon recess taken at 12:40 p.m.)

AFTERNOON SESSION

2:00 p.m.

Exam. Reilly: The hearing will be in order.

RALPH ZOLA

resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q (By Mr. Kiel) Mr. Zola, have you secured and brought to the hearing the new bill of lading agreement which was referred to this morning?

A Yes, sir.

Q Is this it, please? Would you at it carefully?

A Let me look at it carfully. I didn't see it. Yes, it is.

Mr. Kiel: Mr. Examiner, may I have that marked for identification?

Exam. Reilly: Let's substitute that and make that Exhibit No. 159.

The Witness: There have been references made to the sentences in 159.

Exam. Reilly: We will retain 159. Mark this for identification as 162.

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(Applicant's Exhibit No. 162, Witness Zola, was marked for identification.)

The Witness: Mr. Kiel, before we go further, I gave testimony this morning with regard to certain dates, and I have refreshed my recollection over lunch and I would just like to straighten out the date on which I became an active employee, fulltime active employee of Aaacon. It was in September of 1967. The date upon which the revisions of the bill of lading were first commenced did occur in November of 1971.

Q When was this set of documents of the type which is Exhibit No. 162, when was that received by your company?

A That was received by our company approximately two and a half weeks ago.

Q What is the present status of the use of Exhibit No. 162 and Exhibit Nos. 156 and 158?

A They are being and have been distributed to our offices throughout the nation for use in substitutions of every other document which they supersede.

Q Does your company have offices located at various places in the United States?

A Yes.

Q Have you prepared a list of those locations?

A Yes, sir.

Mr. Kiel: I ask that a list of the cities in which Aaacon Auto Transport has offices be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 163.

(Applicant's Exhibit No. 163,
Witness Zola, marked for
identification.)

Q With respect to Exhibit No. 163, does your company have more than one office in certain of the large cities or cities where there is a good deal of business?

A Yes, sir. For instance, in New York City, we have two offices. I could recite all of them. I think they are on the page. New York would be an example.

Q Does your company have a procedure that it follows with respect to the securing, selection and instruction of drivers of the casual type which it uses in its operation?

A Yes, sir.

Mr. Kiel: I am going to ask for a series of documents to be marked for identification, if you please, Mr. Examiner, and then we can explain their utilization.

I ask that an envelope with certain printing in red on the cover entitled, "Important Driver," be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 164.

(Applicant's Exhibit No. 164,
Witness Zola, was marked for
identification.)

Mr. Kiel: I ask that a document entitled, "Driver's Standard Instructions, Aaacon Auto Transport, Inc.," be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 165.

(Applicant's Exhibit No. 165,
Witness Zola, was marked for
identification.)

Q You have a business reply envelope which is colored green and has your name and permits the returning of papers to you that are furnished to drivers.

A Yes, sir.

Mr. Kiel: I ask that that document be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 166.

(Applicant's Exhibit No. 166,
Witness Zola, was marked for
identification.)

Q Now, the documents which are marked 164, 165 and 166, how are they used in your business? What purpose do they serve?

A Exhibit No. 164 is the outer envelope in which the papers that the driver has completed and the shipping papers are contained, and these are normally given to the driver just before the moment he is to pick up the vehicle, and at that point he signs the outer part of the envelope with the printing on it in the spaces indicated. The date is filled in and the estimated time of delivery is filled in. This is to bring to the driver's attention at the last moment, just so it will be fresh in his mind when he leaves us, that he is to take certain precautions with regard to the vehicle and that he is to drive in a reasonably direct route and to give mim--put as much starch in his backbone as possible, if I can use that phrase, so that he does a creditable job for the company and the owner.

Q Does the driver sign a standard application form?

A Yes, he does.

Q That is not among these documents?

A No. We are going to present that.

Q Basically, what does that application form require the driver to fill in?

A It would require him to fill in several references, his last place of employment, his destination, his age, his social security card, his driver's license, his permanent address, any temporary address he has, the telephone numbers and places we can reach of people who would constitute references, their relationship to him, and in addition there are several paragraphs--one paragraph with several sentences, rather, relating to the driver's obligations, and he is to execute that at the bottom, and the reverse side of that form has additional warning provisions, a provision for photographs and fingerprints.

Until recently it used to have a place for affixing of a medical card.

Q With respect to that form, is there any provision on the form for authorized passengers to be signed?

A Yes, it indicates that the driver may only take persons who are authorized by our company and that no one kept a bona fide driver, that is a casual driver, who has been approved by our company, may drive or operate the vehicle. And in addition, it sets forth many of the requirements that the driver has with regard to operation of the vehicle, such as one which is again once more reproduced on the front of this envelope, Exhibit No. 164, which states that he must immediately in the event of accident fill out an accident report form and notify our company.

Q Is the driver given an accident report form when he leaves, or before he leaves your office?

A Yes, he is.

Q Wherever he may be?

A Yes, that's correct.

Q I show you a yellow paper marked in the upper left-hand corner, "Automobile accident report," and ask if that's--if you will identify that.

A That is the accident report form we have used for the approximate two and a half years.

Q Is that in the sheet of papers that the driver gets when he leaves?

Mr. Kiel: May I have that marked for identification,

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please?

Exam. Reilly: Marked for identification as Exhibit No. 167.

(Applicant's Exhibit No. 167, Witness Zola, was marked for identification.)

Q For how long has your company required the drivers fee to be taken before the car is actually turned over to the driver?

A Since the beginning of our operation.

Q For how long have you required that the driver have one or more of his fingerprints affixed to your records before an automobile is turned over to the driver?

A Since the beginning of our operation.

Q Are both of those still required in every instance, to the best of your knowledge?

A Yes, sir.

Q When would that occur, in point of time?

A That would occur normally just before the driver leaves. It actually could occur earlier. Normally a driver is processed in one sitting and while--the time scheduled to be, the driver would come in and fill out a preliminary application after we determined whether or not he was going to our destination for which we had a vehicle and we made a physical once over of the kind of person--a physical examination of the kind of person. At that point, the driver would fill out an application and would present us with the credentials that are required in the application form. In other words, his social security card, his driver's license. These would be photographically reproduced by us. Normally we would then make inquiry from the driver as to the persons listed by him in the application which I have mentioned to you, and he would then go out and have a physical examination by a doctor which was required by the rules of the Department of Transportation until recently. During that time, we would then call up the references listed by the driver and ascertain whether or not he was the person who he said he is and whether or not he was a fit character and who the people with whom we were speaking to and make other inquiries with regard to him.

If a driver were to come back on another occasion, this would normally be done during the interim period or when he came back, and the photographing and fingerprinting would normally occur at the end of the procedure.

In other words, we wouldn't get into the physical labor or involved in affixing photographs and fingerprints and make these telephone calls and these interviews until we were absolutely sure that the car was going out at the last minute.

Q Why did you discontinue medical examinations?

A Because a recent ruling of the Department of Transportation has held that they are unnecessary with regard to the type of operation which we perfomr.

Q Do you remeber the date of the ruling which provided that drivers of automobiles do not need medical physical examinations before they may be used by a carrier to transport an automobile?

A I believe it was January 1, 1972.

Q Is that when you discontined medical examination requirement?

A Yes, sir. We actually discontinued it nationwide about a week after their date.

Q That is one of the regulations that was not any longer under the jurisdiction of the Interstate Commerce Commission, is that correct?

A That's correct.

Q Would you look at Exhibit 165 and explain generally what that is?

A This is a reproduction on our own form of the relevant sections of the code of the Interstate Commerce Commission with regard to the obligations and operations and performances by a driver of a vehicle in Interstate Commerce. And we have reproduced them, but our practice is to give the driver a copy of this and to retain a copy for our own files which the driver would execute.

Q Again, certain of these requirements are now Department of Transportation requirements, aren't they?

A . Yes, you are correct. Just to make that clear, we don't keep a copy of these instructions since only we know what they are by now.

Q What instructions, 165?

A Yes. We keep a receipt from the driver that he had received and read them. This is normally done in our office just before he leaves so that the final impression he has from our company is his responsibilities.

In regard to your earlier question, I notice that 192.60 states specifically what our understanding is and what is in our driver's application, that the passengers in the vehicle must be authorized and that no unauthorized passengers, that is authorized by the carrier--

Q In writing?

A In writing. (continuing) --may accompany the driver.

Q That's Exhibit 165?

A Yes.

Q Now, the green envelope which is duplicated in Exhibit 166, how is that used?

A That's used in one of two ways. At the end of a successful transport of a vehicle, which fortunately there are many of them, the driver would return to us a signed copy of the bill of lading, which he would acquire from the car owner. In the event of an accident, the driver could use this postpaid form to forward to us the accident report form, Exhibit 167, which we enclose with the driver's material.

Q Does the driver carry a copy of the bill of lading form with him?

A Yes, he keeps one of those quadruplicate original forms with him. It serves the purpose of not only having his contract provisions, but keeping a link between him and the registered owner of the vehicle in case he is questioned by the local state authorities.

Q He is instructed to get that signed as a receipt?

A Yes.

Q What is he directed to do with that after it has been signed?

A As I said, he would normally take that and place it in the envelope, the postpaid envelope and mail that to us and discard the accident report form.

Q If a driver comes on one occasion for a portion of the rates to be made for driving a car, and is to return at some later date to pick up a car and to furnish the documentation, is the entire documentation then done in two different meetings?

A Yes.

Q Is that a customary or unusual or just what is it in your business?

A No, it is quite normal. These drivers, after all, are seeking transportation, and they cannot normally wait on a last minute basis and hope we have a car for them. So what they do would be to come in a week, a week and a half in advance, make preliminary application, leave some indication that they are going to return, such as a small deposit, and the bulk of the work for the processing of the driver is done when the return and the car is ready.

The reason for this is that if the driver becomes ill or if as has happened on one occasion, he misrepresents that he is going where he is going, and doesn't actually go, that the labor involved in processing the driver doesn't have to be done in advance.

Q Do you require that the driver give references?

A Yes, sir.

Q Is anything done with those references?

A Yes, the references are telephoned. Normally we call the driver's destination to find out if he is expected at the location, and the purpose of this is to make sure, one, that he is a credible person. We ask the people expecting him what they think of him, and in the event of mysterious disappearance, accident, theft, defalcation, we can assist our bonding company in tracing the driver.

Q With respect to a situation of a driver, we had one appearing at the hearing who was going to Alaska, and he said he was going to Alaska and he didn't know where he would be, what do you do in that situation?

A In that situation, that driver was, as those drivers would have to be, returning to this area, and we call up his father or reverend or his employer and say is he expected back and when and make sure the dates coincide and if there is no expressed return, we just refuse to use him as a driver.

Q If they refuse to give references, what do you do?

A Show them where the front door is and don't use them.

Q And if you check the references and find situations that you are not satisfied with, what do you do?

A We refuse to use those drivers.

Normally, we would place them on our bad driver's list which is circularized throughout the offices of our company and in cooperation with other drive-away companies so no one will fall into the trap of this. Occasionally we may slip because of the volume, but it is a rare occasion.

Q How do the drivers find you, do you know?

A In several respects. We advertise, in the New York Times and in other newspapers.

There is a lot of word of mouth knowledge of our operation among drivers.

We have organizations that we contact such as the Watchtower Society, which is continually seeking out Pentecostal priests throughout the United States and they want to have cars available because they work on a very low budget. In addition, the United States Information Agency has made available to us its outlets throughout the world in order for us to advertise the possibility that drivers may apply as casual drivers. We have prepared with them certain brochures distributed throughout the world and drivers make application to us from practically every country on the face of the globe from Zanzibar, Australia, France, Great Britain, the Netherlands, Japan and these people come in.

Q Do you require to see a passport with respect to those people?

A Yes. Normally with regard to those people, we make the additional thing of requiring them to leave their passport with us on many occasions so that we have the added security of knowing they can't leave the United States.

Q What has been your experience with that type of driver?

A We never had any defalcation or loss with any foreign driver. I don't know if it's their sense of fear of federal authority in the United States or what.

In my memory, as best as I can recollect, we have never had any questionable activities from a foreign driver.

Q Have you brought to this hearing a copy of your tariff, MF-ICC No. 6, as filed with the Interstate Commerce Commission to become effective June 8, 1970?

A Yes, sir.

Mr. Kiel: May I ask that this document be marked for identification?

Exam. Reilly: Freight tariff marked for identification as Exhibit No. 168.

(Applicant's Exhibit No. 168, Witness Zola, was marked for identification.)

Q Mr. Zola, has Exhibit No. 168 been changed and modified at various times with respect to certain of the items in this Exhibit No. 168?

A Yes.

Q As pertinent here, is there presently in effect fifth revised page 8, which refers to the provisions of rule 21, which we discussed earlier?

A Yes, sir.

Mr. Kiel: I ask that that page also be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 169.

(Applicant's Exhibit No. 169, Witness Zola, was marked for identification.)

Mr. Kiel: May the record show that there are other changes which I don't believe are necessarily important to this proceeding and they are not contained in Exhibit No. 168. If they are desired, I have my mater copy of the tariff and it will be available to any one who wishes to use it. At the bottom of Rule 20E, I believe the commission changed the released rates order number. You will see a reference mark indicating that there is a change, but there is no change in the charge or the amount of money to be collected.

I think if you look at Exhibit 20, Mr. Browning, in the tariff you will see the released rate order number was MC 690 and it was changed to 803.

Mr. Browning: Exhibit No. 20?

Mr. Kiel: Rule 20. It's on page 8.

Mr. Examiner, I wonder if I might digress for a moment and ask whether or not to Mr. Trecartin--we began--it was my understanding that he would be available and we would have some indication and we could move with respect to his testimony.

Mr. Browning: He will be available. I don't know when. I got the message when I got back from the hearing that he intended to be here this afternoon.

Mr. Kiel: Then, as I understand it, you expect him here today?

Mr. Browning: I expect him here today. That's what he tells me.

Mr. Kiel: Mr. Examiner, I will move at this point, I will again agree that subject to his being here today I will not make any motion with respect to his testimony but that if he isn't here before we close--

Exam. Reilly: I think that the realization of the exhaustion on the part of the examiner, if he isn't here at four o'clock, I can enterain a motion.

Mr. Browning: I understand that, and we can cross that bridge when we come to it.

Exam. Reilly: I don't want him appearing here at a quarter to five and put him on. I don't intend to run as we did last night.

Mr. Browning: I agree with that. The only thing I am thinking of is if there is some bona fide reason that he can't be here, that I would like to have a chance to put him on tomorrow morning, if I could, if that happens. I have no way of knowing whether he is expecting to be here or not. He said he would. I am just looking out for the event that he is not here for a very good reason. But I will meet that at the time the motion is made.

Q (By Mr. Kiel) Mr. Zola, have you familiarized yourself with the insurance requirements of the Interstate Commerce Commission?

A Yes, sir.

Q Are you familiar with the holding out of your company with respect to its insurance?

A Yes, sir.

Q Can you tell us whether or not your company has filed with the Interstate Commerce Commission certificates of insurance with at least the minimum amounts for liability and property damage insurance as required by the commission?

A Yes, we have.

Q Has it done the same with respect to carrying insurance coverage?

A Yes, it has.

Q Is there any other insurance requirement of the commission with respect to any other type of insurance?

A No, sir.

Q Does the commission have any requirement with respect to the bonding of drivers?

A No, sir.

Q Exhibit No. 8 in this proceeding contains information which was introduced as being typical of your advertising and as you refer to your insurance, and again is what the similar statements are contained in Exhibit 156, namely, we insure your car in the amount of three million dollars for liability.

Will you tell me whether or not your company maintains insurance with respect to liability in the amount of three million dollars?

A Yes sir, it does.

Q Now, there is also some reference to the phrase, "fully insured," and I believe you indicated or referred to that in your earlier testimony. Would you explain, do you use that phrase now?

A No, sir. As I mentioned earlier, we eliminated that phrase so that--at the suggestion--we eliminated it solitarily upon the suggestion of a telephone call of Mr. Len Schoer of the ICC who has always been very cordial to us because of the possibility that some people would misconstrue that phrase.

That phrase was meant to imply that we provide all of the insurance that is required by federal law and by the rules and regulations of the commission. In fact, we exceeded the insurance requirements of the commission by approximately 3,000%. That is to say, the commission--when we started out, I think the commission required ten and twenty-five or twenty-five and one-hundred. It has gone up since then. We didn't stop at those levels. We feel that the only way to protect in today's high judgment situation is to have three million dollars of liability, the last layer of which is placed with Lloyds of London.

Q With respect to that sir, based upon your knowledge, would you tell us whether or not it is the highest level of insurance for an automobile transporter in the industry?

A From my review of automobile competitors that we have, it is approximately three times the size of the next highest.

Q Now, does your company maintain collision coverage for the vehicle of the owner for whom you are transporting the vehicle, including all the deductible amounts?

A I would like to explain that.

Q Would you please?

A Yes.

We use the words, "collision coverage," because we are talking about damage to a unique kind of cargo that's operating on the highway and would normally be damaged by a collision. It is cargo insurance and the public would be misled if we said cargo, so we say collision insurance which the public understands to mean insurance covering damage to the physical structure of the cargo in this case the automobile being transported.

Our liability to the public and the filing of our insurance company with the commission pursuant to, I believe, it is B.M.C.-32, is for the full amount up to $7,500 pursuant to our tariff rates and the tariff provisions without any deductible amount whatsoever.

Q With respect to your insurance, would it cover a situation where there were $2.00 worth of damage and you got a claim for $2.00?

A Yes, sir.

Q Would it cover a claim for damage if it was $50.00?

A Yes, sir.

Q Would it cover a claim if it was $1,000?

A Yes, sir.

Q Now, with respect to this situation, have you, since you have held your certificate from the Interstate Commerce Commission, insurance policies and certificates of insurance which reflected those policies filed with the Interstate Commerce Commission?

A Yes, we have maintained those policies.

Q Do you use an insurance agency called Interstate Motor Carriers Agency?

A Yes, we do for some of our insurance.

Q Did they place with the Home Indemnity Company your basic bodily injury and property damage coverage?

A Yes, they did.

Q Is that the policy and covering transmittal letter and invoice which I have shown you?

A Yes, sir, it is.

Mr. Kiel: Mr. Examiner, may I substiture photocopies for the original documents that the witness has?

Exam. Reilly: Yes. You want this marked?

Mr. Kiel: Yes, may I please have that marked for identification?

Exam. Reilly: Marked for identification as Exhibit No. 170.

(Applicant's Exhibit No. 170, Witness Zola, was marked for identification.)

A I would like to correct, Mr. Kiel, a statement you made with regard to the characterization of the top page of Exhibit No. 170 as an invoice. That is merely an advanced premium on the underlying rate--the underlying policy of insurance of $61,000 which we advanced for a single year.

Our policy charges for liability insurance alone irrespective of bonding and cargo insurance, runs to over $100,000 a year.

Q You have an insurance policy that is dependent upon your gross receipts?

A It's the number of cars transported.

Q This would be the basic rate shown on the first page of No. 170?

A That is the rate--that is an arbitrary amount which the insurance company requires in advance.

Q Now, is the third page of Exhibit No. 170, representative of the basic coverage that you carry through the Home Indemnity Company?

A Would you identify the page?

A Third page from the top. It says, "home," across the front of it.

A Yes, that is the face page.

Q And going now to the fifth page from the top of the-- on the top of the document it is entitled on the upper left-hand corner, "B.M.C.-90, do you see that?

A Yes.

Q Is that a requirement of the Interstate Commerce Commission?

A Yes, sir.

Q Basically, what, in your opinion, does that add to the normal policy of this type which someone not regulated by the Interstate Commerce Commission would get?

A In addition to insuring Aaacon for damage to vehicles and in addition to providing insurance coverage,. this provision constitutes and undertaking field with the federal government on behalf of the public by our insurance carrier to pay any damage claim for which Aaacon is liable to the extent of our liability without any deductible set-off or counterclaim.

Q And that's whether or not the insurance company would legally be responsible for it or not? They are obligated are they not, in your place?

A They are obligated primarily, yes.

Q In addition to that insurance--

A I am sorry, Mr. Kiel, I have made a mistake in my testimony and I wish to correct it.

Q Will you do so, please.

A Yes.

With regard to that B.M.C.-90 endorsement, the purpose of that endorsement is to guarantee to the public that any judgment rendered against Aaacon Auto Transport as a result of a bodily injury or property damage claim to third parties will be paid by the insurance company.

I was for a moment confused with our cargo damage policy.

Again, however, I wish to make clear that it creates a primary obligation--

Mr. Browning: Mr. Examiner, I object to the volunteering all the way through in his testimony without questions being posed to the witness.

The Witness: That was a correction.

Q Mr. Zola, what does that provide, please?

A It provides that the insurance company is responsible directly to any third part who obtains a judgment against us as the result of property damage or bodily injury resulting to said third party from our drive-away operations and pursuant to the requirements of the Interstate Commerce Act.

Q Now, do you have policies with Reserve Insurance Company, Continental Casualty Company and Lloyds of London with respect to excessive coverage in excess of the insurance covered by Exhibit No. 170?

A Yes, sir.

Q Do you have those policies with you?

A Yes, sir.

Q Have you made photocopies of the cover sheet of each of those policies with the number of the policy and the period of time that it covers and so forth?

A Yes, sir.

Mr. Kiel: May I ask that these documents be marked for identification.

Exam. Reilly: Reserve Insurance Company facing sheet marked for identification as Exhibit No. 171.

(Applicant's Exhibit No. 171, Witness Zola, was marked for identification.)

Mr. Kiel: I ask that the same identification be given to the cover sheet on policy of Continental Casualty Company.

Exam. Reilly: Marked for identification as Exhibit No. 172.

(Applicant's Exhibit No. 172, Witness Zola, was marked for identification.)

Mr. Kiel: I ask that the document entitled, "Memorandum of Insurance," which also indicates effected through Parke Stethem, Limited, insured with underwriters at Lloyds, London, be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 173.

(Applicant's Exhibit No. 173, Witness Zola, was marked for identification.)

Q Would you please refer back to Exhibit No. 170. There is an endorsement on there which is entitled, "Endorsement

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Number One." It is the fifth page from the year of that exhibit, and explain what that endorsement is intended to do?

A This endorsement was intended to fit the standard insurance jacket, which means the standard insurance outer contract to the unique operation of a drive-away service, and it states--it's just one sentence, that it is agreed that such insurance as is afforded by the policy for bodily injury, and property damage liability, applies with respect to any automobile while being delivered to a specific location by the named insured, and this is the basis of the statement on Exhibit No. 156 when we say we insure your car in the amount of three million dollars for liability et cetera. This is practically a paraphrase word-for-word with very few changes of that language.

Q Would you look at Exhibit No. 171 and indicate what that policy means?

A No. 171 brings the--constitutes a second layer of insurance covering the same occurrences by the Reserve Insurance Company of Chicago to the amount of a quarter of a million and a half a million dollars respectively from the underlying Home policy of $25,000 and $100,000.

Q Does this cover both bodily injury as well as property damage?

A Yes, sir, it covers the same obligations as are spelled out in full in the Home policy, Exhibit No. 170.

Q Now, would you look at Exhibit No. 172 in the upper left-hand corner. There was apparently something that was folded in copying. Would you give us the words in the upper left-hand corner?

A I would have to get the original policy. You will have to bear with me a moment for those. It states, "Excess third party liability policy."

Q Would you explain what the prpose of this additional insurance is?

A This constitutes the third layer of insurance, bringing the coverage under the basic Home policy and the Reserve Insurance policy from what was just testified to as a quarter of a million and a half a million dollars to a total combined one million dollars.

Q Does this cover your liability and property damage?

A It covers bodily injury, liability and property damage liability to third persons.

Q Would you look at Exhibit No. 173, please? What is the purpose of that insurance policy?

A That is the final layer of insurance, the fourth layer, and these layers, by the way, are interconnected, they operate as a single unit, and this is written by the New York agent of Llyods of London, Parke Stethem, and this brings the underlying limits of CBA and Reserve and Home up to three million dollars.

Q In this respect, is it a fact that Exhibit No. 173 does not indicate the amount of the coverage? But rather it says as per schedule of limites attached? Would you look at that schedule and tell us what the policy actually says?

A The schedule of limites states very briefly, to pay the difference between the total limits of bodily injury three million dollars any one person, three million dollars any one occurrence; and underlying limits of bodily injury one million dollars any one person, one million dollars any one occurrence.

Q With respect to 173, would you explain what the language is understood by you to mean after the word, "interest"?

A I-n-t-e-r-e-s-t. Where is that word, Mr. Kiel?

Q Right under, Particulars of Insurance on the cover page.

A That incorporates by reference and makes a part thereof the Home Indemnity policy terms and conditions which is referred to as an insurance jacket.

Q In effect, are you saying, then, that to the extent that Home Insurance insures you for $25,000, and $100,000 liability and $10,000 property damage, that this coverage under the policy which is reflected by Exhibit No. 173 raises that to three million dollars with respect to public liability?

A Yes, sir.

Q Do you advertise that you are insured up to three million dollars?

A Yes, the actual language, interest, interest which you have just read actually adopts the language which I have previousl read on the endorsement stating that it covers the carrier transporting for bodily injury liability and property damage liability. So that the Lloyds of London has actually adopted that same language which appears in the Home policy and which appears in our sales literature.

Q In addition to the public liability and property damage insurance, will you tell us, sir, the name of the company with whom you insure your cargo responsibility?

A American Plan Corporation of Westbury, New York.

Q For how long have you had that insurance?

A I think for the last four years.

Q Is a certificate of insurance filed with the Interstate Commerce Commission to the best of your knowledge?

A Yes.

Q Was there a reference in various communications with are in this record to notification by the commission that America Plan covered your cargo liability?

A Yes, sir.

Q With respect to your cargo responsibility, does your insurer provide an endorsement to your policy and have they filed with the commission a holding out to the commission that the cargo damage coverage is without exclusion or deductible provisions insofar as recovery by the public is concerned?

A Yes, sir, that's correct.

Q As a practical matter, insofar as your relationship with the insurance company is concerned, would you explain, do you have any requirement on your part with respect to satisfaction of claims between you and your insurer of any amounts?

A Yes. Our understanding with our insurance company is that any amounts paid by them up to a thousand dollars are recoverable directly from us, and the basis of this is the fact that we have had negotiations with American Plan in Westbury, Long Island, with regard to our claims procedures and with regard to their filing.

In addition, they have required our company and our offices to make certain undertakings with them with regard to the liability so that they are protected in recovery over against us of all amounts.

Specifically, claims are filed directly with our insurance company by the public pursuant to instructions from the section of insurance and from the bureau of operations with respect to third party claims and with respect to these claims inasmuch as there is no deductible amount as between the public and our insurance company, liability is absolute from one penny up.

Q With respect to the relationship between you and the public, is that same correct, that your liability is from one penny up with no deductible amount?

A Yes, sir, if a claimant files a proper claim with us, our liability is complete from the declarer--from one cent up to the total liability, I think it is $6,000, unless they pay additional tariff charges, without any deductible amount whatsoever.

Q Now, have you in the past had occasion to discuss this with various and sundry people at the commission?

A Yes, sir.

Q Have they advised you with respect to your responsibilities?

A Yes, they have.

Q I show a letter dated February 18, 1970, from Mr. Tomany, your district supervisor, who is the district supervisor who has your company in his teritorial jurisdiction, and I ask you if you recognize that as an instruction from Mr. Tomany to your company with respect to the fact that none of your insurance filings have deductible provisions?

A Yes, sir.

Mr. Kiel: May I ask that that document be marked for identification? We will reserve the original.

Exam. Reilly: Marked for identifcation as Exhibit No. 174.

(Applicant's Exhibit No. 174, Witness Zola, was marked for identification.)

Q Is the provision that we discussed the next to the last paragraph on this letter which reads , "The insurance filings with the commission have no deductible clause"?

A Yes. I must add to clarify it. You stated, you characterized this as an instruction to us. It actually was an instruction to Lewis Jacobs, Esquire. It was addressed to us but it was pursuant--

Mr. Browning: I object to that. Mr. Examiner, that's the wrong witness to get that evidence from.

The Witness: The first paragraph indicates it.

Exam. Reilly: I think the letter speaks for itself. Who cares whether it is an instruction to any particular person.

Mr. Kiel: Mr. Examiner, since the witness began his testimony this afternoon, we have secured the blue document which is the driver's application that the witness described and which was missing from our shive of exhibits. May I ask that it be marked for identification now?

Exam. Reilly: Marked for identification as Exhibit No. 175.

(Applicant's Exhibit No. 175, Witness Zola, was marked for identification.)

Q Is this document, which is marked for identification as Exhibit No. 175, a document used by your company?

A Yes, sir.

Q There has been some reference to a driver application. Is this the form that you were referring to?

A Yes, sir.

Q How long has your company used this type of form?

A Approximately--well, with variations, but the actual current form I would say approximately 9 months. It might be a few months more, I am not exactly sure.

Q Mr. Zola, does your company hold out to the public to pay the full value for collision or cargo damage in case of such loss?

A As to every proper claim, yes.

Q Do you hold out that you are not responsible in a proper claim for a full value but merely for an amount over and above the car owner's collision insurance deductible?

Mr. Browning: I object to that. That's a very leading question. It won't do any good to object at this point but it is an improper question.

Mr. Kiel: I am sorry.

Q Will you tell us whether or not your company holds out its responsibility with respect to collision or cargo insurance, cargo coverage merely to an amount over the owner's deductible collision insurance?

A No, sir.

Mr. Browning: I object. He hasn't gotten off the leading question tactic yes. The witness knows what he wants. I object to it.

Exam. Reilly: I am going to overrule the objection.

It is a little bit difficult to conceive other than leading questions with respect to witness and this attorney. You have been riding in a tandem tooling.

Q With respect to your advertising, will you tell us whether or not you have held out to the public that drivers are bonded? For example, as shown in Exhibit No. 8, which says, "Our drivers are bonded for the sum of $7,500." Or in Exhibit No. 74 where there's a statement that each of your drivers is fully bonded.

A Yes, sir.

Q Do you actually bond drivers?

A Yes, sir.

Q I show you a document and ask you if you will identify that.

A This is the current bond replacing the prior bond that we have had in effect since, I believe, 1966, December of that year. I may be wrong in the initial date.

Q Just a moment. May I have this document marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 176.

(Applicant's Exhibit No. 176, Witness Zola, was marked for identification.)

Q Is Exhibit No. 176 part of a blanket bond to which there is more than this one page?

A This is the cover page listing the coverage. The rest would be the standard jacket of what is called the 3D bond.

Q You have that bond with you?

A Yes, sir.

Q Is this bond required by any regulation of the commission?

A No, sir.

Q Why do you have it?

A We have it because we feel a person giving someone else their vehicle may be subject to certain exposure which might not be covered by damage to property, which is fraud, defalcation, in the best elements. Especially where you have a question of permissive use where the vehicle is tendered over to another person by the owner and the owner says, "I give you permission to drive it," and something happens with regard to the driver, and the purpose of this bond is to cover the standard, what is called standard fidelity occurences--it used to be in the amount of 5,700, we increased it to 25,000. As a result, since the amount did vary, we eliminated the specific reference to the amount of the bond from our sales literature, Exhibit No. 156.

Q During this proceeding, there has been some testimony that when you were querried with respect to the bond that your employees were loath to disclose the name of the bonding company.

A Our employess--and I have been instructed by the insurance companies that they do not want their names directly disclosed to the public on a voluntary basis.

Apparently some members of the public misconstrue which coverage is for what.

I think we have heard enough testimony in this proceeding on that. On the member of the public becoming obstreperous instead of filing their claims with the carriers. These claims can get lost by being filed with a wrongful insurance carrier and in nine months we are permitted from making any settlement with them.

Q Have you made an analysis, sir, with respect to the state laws as they involve liability of an owner of a motor vehicle which is tendered to a drive-away company for transport and the liability of a drive-away company when transporting a motor vehicle as it relates to claims of third parties that may be involved in an accident with the vehicle that you are operating?

A Yes, sir, I have made an extensive investigation of that question.

Q In that respect, have you discussed that with representatives of the commission and gotten some of their thoughts with respect to this most difficult question of legal liability?

A Among others, yes.

Q I show you a letter dated February 7, 1972, and ask if you will identify that document.

A This is a letter to me from Mr. L. L. Sloer, Chief Section of Insurance of the Interstate Commerce Commission which was sent pursuant to a telephone conversation I had with him concerning the question of primary and secondary liability coverage with regard to owners' insurance and carriers' insurance in the course of drive-away operations and in the course of transportation in interstate commerce of motor vehicles by drive-away.

Mr. Kiel: May I ask that that three-page document so identified be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 177.

(Applicant's Exhibit No. 177,
Witness Zola, was marked for
identification.)

Q Have you read the covering letter as well as the two-page copy of a letter which was attached?

A Yes, sir.

Q Basically, will you tell us whether or not you agree with the doctrine set forth in that letter?

A The letter of April 1, 1968, which is forwarded by the covering letter, sets forth my understanding after extensive review of the exact state of law with regard to liability insurance arising from damage to third party vehicles, property and bodily injury as a result of transportation of vehicles in drive-away service in interstate commerce.

Q Have you received communications from attorneys in the course of litigation with respect to the question of liability of a carrier such as yourself and an owner of a car involved in an accident as it relates to a third party?

A Yes, sir.

Q I show you a letter addressed to you from Black, Robertshaw and Frederick, attorneys at law, Phoenix, Arizona, and ask is that a letter which you received in the usual course of your business?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 178.

(Applicant's Exhibit No. 178, Witness Zola, was marked for identification.)

Q Would you please explain the purpose of Exhibit No. 178?

A Yes.

Prior to Aaacon being insured by the Home Insurance Company for the initial layer of liability insurance, Aaacon was insured by the Aetna Casualty Surety Company, and Aetna Casualty Surety defended Aaacon in actions arising from third party liability claims throughout the United States.

With regard to this particular case which occurred in Phoenix, Arizona, the car owner's insurance was the Alstate Insurance Company, and I had extensive telephone conversations with the attorney for Aetna, Richard A. Black, in which he indicated to me that from his understanding of the law which confirms the understanding set forth by Mr. Schoer and my understanding of it after extensive research, the primary liability under liability policies enures to the car owner's liability policy pursuant to the standard omnibus insurance clause which has been adopted by practically every state in the union. The letter sets forth in actuality the trial technique that Mr. Black was attempting to use, that is to say, in order to satisfy the third party's claim, he was seeking to have Aetna cooperate with Alstate and pay it and then have the two companies bat out between the two of them any question of primary and secondary liability, because the liability law with regard to third party liability and the question of which company is primary and which company is secondary is not controlled by federal law but it is controlled by state law and it is the law of several states which have adopted the omnibus insurance clause, more of which I will testify about after, which governs this, and that's indicated in Schoer's letter.

Q With respect to that issue, then, will you tell us your opinion whether or not it's important that an owner of a motor vehicle which you are transporting notify its insurance company of an accident with respect to third party liability?

A It is vitally important that the owner do this immediately, because the policies of insurance in practically every state in the United States provide that unless the insurance company is notified by the owner of the occurrence, that is to say, the accident, and the phrase is, as soon as is reasonably practicable, there will be no coverage under the policy in defense of any owner liability.

Now, inasmuch as the laws with regard to the interstate transportation of motor vehicles as they relate to third party liability claims is that the owner's insurance is primarily liable, it is vital that the owner's policy--that the owner be put on notice and his policy be made effective so that his coverage be put in tact.

Q Will you tell us if that's the reason why you advise your people to tell your shippers to notify their own insurance company?

A That's correct. That's exactly--

Mr. Browning: I object unless he makes the circumstances clear, cargo insurance, liability insurance or what?

Q Just liability insurance at this point.

A With regard to liability insurance, upon the occasion to us that any damage has occurred to a vehicle with regard to striking of any other object or person, we always inform the owner to immediately notify his insurance company so that his policy will be actuated to the extent that he may be found to be liable and to the extent that the policy may be effected so that he will not be accident or instance waiver the coverage which is required both by state and federal law and which will protect him in the first instance.

Q Don't you have that same kind of insurance, to protect him?

A We have exactly that insurance and simultaneously in the case of every accident we notify our insurance carrier in every case without exception.

Q Now, can you give us briefly the reason why, if you have the insurance, and you cover the vehicle, why the owner of the vehicle might jeopardize his position by not notifying his insurance company if your insurance covers it?

A There are two reasons. First of all, under the laws of several states, the owner's insurance may be primary. This is solely speaking with regard to liability claims.

Q Can you effect or change those state laws?

A No, sir.

Mr. Browning: I object to that. Obviously, he can't.

A That is the first reason.

The second reason is that with regard to the liability claims there is a possibility that the owner may be responsible for certain causes of action arising from the transportation of his vehicle for which the carrier is not, and a perfect example is that--is a case in New York called the Joe Ardena case involving our company wherein the driving sued by Aaacon, the owner of the vehicle, the manufacturer of the vehicle, the sales company of the vehicle, the tire manufacturer as a result of his bodily injury in an accident.

Q To the dirver?

A This is the dirver. And the claims agains the owner were not claims relating to the derivative method from our company, but claims directly relating to what the owner should have known as the owner of the vehicle, and had he not been informed and had his insurance company not been informed, his exposure would have total regardless of question of primary and secondary coverage with regard to the various policies of insurance effected by Aaacon and his own insurance company.

Q Now, with respect to the cargo insurance, do you have any policy or provision in your company to advise car owners to notify their insurance company?

A We have--

Mr. Browning: I object to that. It's a leading question. You can ask him what his policy vis-a-vis--

Exam. Reilly: Go ahead.

A With regard to the cargo coverage, we have policies which are spelled out both in our manual, our company manual, and specific policies of our claim's department, and that policy is that in every instance we suggest--again this is not a matter of--this is a matter of limited damage. The owner's exposure here is only the value of the vehicle. Whereas in liability claims his exposure may be a million dollars. But we suggest in every case before we find out any of the facts, that the first thing he do is to put his company on notice that a claim has existed.

He didn't have to bring a claim through them and it is just a suggestion on our part. The reason for that is that if the damage to the vehicle is not the result of an occurrence for which we as a carrier are liable, he may still have coverage and probably does have coverage under his own collision policy, and in this manner he is able to avoid the same problem that I indicated occurs with regard to liability insurance on automobiles, that is to say, that same provision occurs in collision policies throughout the United States, that is unless the insurance company is put on immediate notice of the occurrence, they are not responsible and may decline to pay a claim for damage to the vehicle, and such an occurrence might be, for an example, where a car is damaged through an act of God, for which a carrier would not be responsible, but for which the owner's collision policy would be, and this protects the owner.

Q Have you a policy manual which is used in your business which instructs your personnel with respect to this type of problem?

A Yes, sir.

Q I show you a document and ask you if that's a copy of a page of your manual that refers to that subject matter?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 179.

(Applicant's Exhibit No. 179, Witness Zola, was marked for identification.)

Exam. Reilly: Off the record.

(Discussion off the record.)

Exam. Reilly: On the record.

Mr. Kiel: It is 4:00 o'clock, Mr. Examiner. I wonder if Mr. Browning's witness is here?

Mr. Browning: I didn't know you asked for a timetable.

Exam. Reilly: Go ahead, Mr. Kiel.

First, may I ask just to shorten it, are you willing to carry this over until tomorrow morning for the appearance of Mr. Trecartin?

Mr. Browning: I can't get a hold of the man now.

Apparently something happened over in the court and he got detained and he couldn't meet his commitment. So I don't know the extent of it, but to my understanding he was going to pick a jury. If he is going to pick a jury, probably he will be over there tomorrow, too. I would like to defer the matter to the conclusion of their case, if I may, as perhaps in the rebuttal capacity or something of that nature. In any event, I think the man has made a bona fide attempt to get here today and apparently he couldn't do so due to circumstances beyond his control and beyond my control. He has been examined at agreat length by the Zolas, which indicated to me any way in linking to the--which indicated to me that Mr. Ralph Zola was intimately familiar with all of the ramifications concerning those cases by which the witness testified and I don't see how they could in good faith at this point say they didn't know what the witness--the matters by which the witness testified.

I would like to, if I may, call him again later on this afternoon before I go home and find out whether or not he would be availabe in the morning, and if we quit early enough I can do that and have an answer for you by this afternoon.

I will try to bring him back in the morning if I can. If I can't, I would like to have it deferred until he can make it, as soon as possible, this week.

The Witness: Mr. Examiner, I would like to be heard on this. First of all, as to my intimate familiarity with the case, we have this day--and I was necessitated to go after hours to our office to get down the files in the Bolt matter which are in a carton approximately a foot high by a foot and a half by a foot deep. The matter is extensive and I was not familiar with it, and, as a matter of fact, there are matters in there which need correction because of my lack of familiarity, and I respectfully urge that the record note and Your Honor consider the fact that what is at issue here on the question of notice is not whether or not we are familiar with a shipment that may have occurred, but whether or not we have had an opportunity to prepare a defence for cross examination.

I am familiar with approximately five hundred to a thousand shipment of the hundred thousand that have occurred in the course of my business, but I would not be as an attorney prepared to cross examination or defend with regard to the incidence that arose in any of those shipments and, I think, that that is an important distinction which has to-date been overlooked in this proceeding.

Mr. Browning: Mr. Examiner, just in brief response to that, as far as the administrative procedure act is concerned, it is not my understanding that we are required to give them ammunition from which they may cross examine a given witness. We were certainly obliged to give them the matters of fact law which were asserting at the hearing. By the order of the commission which instituted the investigation proceeding and also by means of my letters, I think there are at least three or four letters of mine to the respondent in the exhibits, and we have met our obligation, Your Honor, in that respect. We don't have to give them the information so that they can cross examine a witness. He has to be in a position to cross examine a witness upon the termination of my direct examination, and it can't cover any matters other than those which have been covered by my direct examination. That's preposterous.

The Witness: In that regard, I believe it is not necessary for us to go ahead with our case until the commission has completed their case. Now, either the commission will complete their case or will not complete their case.

Exam. Reilly: Are you going to accede to the requests of Mr. Browning or not?

Mr. Kiel: Mr. Examiner, I have acceded to the requests since this morning. It was my understanding that we could move this morning at the beginning before our testimony was required to be started, and I agreed.

Exam. Reilly: Mr. Kiel, I know what happened. Are you going to accede or are you not?

Mr. Kiel: No, sir, not any longer. I believe, though, that we have acceded.

Exam. Reilly: Now you are ready to make your motion?

Mr. Kiel: Yes, I move that the testimony of Witness Trecartin be stricken.

Mr. Browning: I oppose that motion on the ground that there is no basis for it. We have given them the opportunity to cross examine the witness at great length yesterday. As a matter of fact most of the testimony that was adduced from that witness was in the nature of cross examination, not in the nature of direct examination, and they have had ample opportunity.

Mr. Ralph Zola was familiar with the case about which the witness testified, and I can see no basis for a motion to strike at this point.

Exam. Reilly: I am not ruling on any basis other than the witness is not here for cross examination.

I am not impressed with any of the arguments except that one. The witness is not here. He refuses to accede to your request to permit the witness to come at a later time. So that I have no alternative but to grant his motion.

Mr. Browning: Mr. Examiner, I, as soon as possible, respectfully accept to that ruling. We certainly ran out of time yesterday on the cross examination.

Exam. Reilly: I know, we went until five minutes to six in an attempt to get rid of the witness.

Mr. Browning: And we all had to go home. All right.

Mr. Kiel: Mr. Zola, have you familiarized yourself with the so-called omnibus statutes with which govern his liability of owners of automobiles in some of states in which you operate?

A Yes, sir.

Q I show you--

A If I may correct you, it is called the omnibus insurance clause.

Q I show you section 175 of the California Civil Liability Code, motor vehicle code, and I ask if you recognize that as being what I indicated it was?

A No, sir, this is not an omnibus insurance clause. This is what would be the companion clause to go along with it, which creates on the part of every owner of a vehicle direct and primary liability to damage to the body or property of any third person as a result of the use of the automobile by any permissive user.

Q You recognize that as a provision in the California law?

A Yes, sir. I copied it out myself.

Q Is this a photocopy of the statute?

A Yes, sir.

Mr. Kiel: May I ask that this document be marked for identification?

Exam. Reilly: I hope the docket copy is somewhat more legible than the one give to me. Make sure the docket copy is readable. Marked for identification is Exhibit No. 180.

(Applicant's Exhibit No. 180, Witness Zola, was marked for identification.)

Q Insofar as your business is concerned, what effect do you understand this section of the California law to have?

A The effect of this section of the California law and similar sections in practically every state of the United States place the primary responsibility for third party liability claims for bodily injury and property damage upon the owner of a vehicle regardless of who is driving it as long as the person driving it is driving it with the consent of the owner or with the consent of someone to whom the owner gave consent.

Q Have you secured a similar statutory provision in New York relating to civil liability of an owner of a motor vehicle?

A Yes, sir.

Q I refer you specifically to section 388, which starts on the first page and goes over onto the second page.

Exam. Reilly: Marked for identification as Exhibit No. 181.

(Applicant's Exhibit No. 181, Witness Zola, was marked for identification.)

A That would be a similar provision to the California code provision as afore mentioned.

Mr. Browning: What is this? Mr. Examiner, I object to having it marked for identification. I can't even figure out what it is.

Q Mr. Witness, would you explain what section 388 of the New York statutes is that is contained in Exhibit No. 181?

A Yes. Section 388 of the New York statute, which is similar to section 17150 of the California code, both set up the accomodating statutory provisions for car owner primary liability with regard to third party, property damage and bodily injury claims and make the car owner--and declare the car owner the party to be responsible.

Q Insofar as that would have any effect on your business, what would you have to say, the effect of that on our business is to codify in statutory form the question of primary and secondary liability as between the shipper and the carrier with regard to third party liability claims for bodily injury and property damage arising during the course of transportation of a motor vehicle in interstate commerce?

Mr. Browning: Mr. Examiner, I object and I move that be stricken. That's not my interpretation. I just have briefly read it over and I don't see anything in here, in the document relating to common carriage.

Mr. Kiel: Mr. Examiner, counsel can cross examine. Undoubtedly he disagrees with things the witness has said. The objections to the admissibility of the exhibit can be made when they are offered. I ask if counsel will just have a little patience with me.

Q Mr. Zola, have you familiarized yourself with the insurance law of New York with respect to provisions which must be contained in liability insurance issued in New York State?

A Yes, sir.

Q By the way, is every owner of an automobile required in New YOrk to have liability insurance before his license will be issued?

A Yes, sir. And that is the practice in most states.

Q I show you section 167 of the insurance law and ask if you recognize that provision?

A Yes, I do, sir.

Q Is that the insurance law of the State of New York?

A Yes, sir.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification is Exhibit No. 182.

(Applicant's Exhibit No. 182, Witness Zola, was marked for identification.)

Q Would you please explain, sir, what effect if any this provision has on your business and your relationship with your shippers for whom you transport interstate commerce?

A Yes, sir.

This provision, which, as you can see from the fourth line thereof, is to be read in conjunction with section 388, which has been reproduced as Exhibit No. 181, together constitute the receptacle and the contents, if you will, of an insurance scheme by which the state of New York and every other industrial state and most states of the United States, have provided, that the owner of a vehicle is primarily responsible for damages occurring to third parties for bodily injury and property damage resulting from the use of his automobile by permissive use.

Mr. Browning: Mr. Examiner, I submit that that is an improper conclusion. It certainly is only an opinion of this witness, and otherwise I move that it be struck. If it is our understanding and if I can get a stipulation by Mr. Kiel that this is certainly an opinion of the witness--

Exam. Reilly: I think the witness is testifying in this respect as an expert and we will take it as opinion testimony, Mr. Browning.

A If I can continue.

Q Would you please.

A You asked me the relationship. This relationship is reflected in the American law reports and notated, volume four of the third sets of revision, wherein the American law reports, which is the most difinitive work on the subject of the laws of the severalstates, provides under section 17, in cases involving the coverage of omnibus clause, that is the type of clause referred to in Exhibit No. 182, where a third person was driving the insured automobile with the consent of a permitee of the named insured, a permitee would be someone authorized by the insured, to arrange for the permissive user, the courts in accordance with general legal principles have given effect to statutes requiring that all insurance policies contain an omnibus provision. End of quote.

Q Insofar as your operation of a mother vehicle of a shipper is concerned, what kind of user would you be?

A We are both a permitee and permissive user.

Q Will you please refer back to Exhibit No. 168, which is the tariff of your company, which was effective June 8, 1970, and turn to exhibit--rule number 2, paragraph F, and tell me what it was intended that that provision in the tariff should cover or provide?

A This is as reproduced on original page 4, Mr. Kiel.

Q Yes.

A That tariff provision indicates that the cost of the transportation does not include repairs or replacements to the vehicle, maintenance, oil or lubrication service thereto. And the import of that rule is to place such obligations upon the shipper.

Q With respect to rule 11 in the same public occasion on page five, what is the purport of that rule?

A The purport of that rul is that mechanical breakdowns occurring during the course of transportation are the responsibility of the shipper in the absence of carrier fault and it is that phrase, "in the absence of carrier fault," which I alluded to eariler in referring to the change made in our bill of lading. It indicates that any repairs made during the course of transportation on the vehicle are made for, on account of and at the expense of the shipper.

Q With respect to rule 13 on page six, what is the import, the purpose of that rule?

Mr. Browning: Mr. Examiner, I submit that this document speaks for itself regardless of what its purpose was.

Exam. Reilly: I don't know what document should. This is suppose to be a document to which lay persons have an access. It should be written in such a style and manner in which lay persons can understand. I don't think we need to ask this witness what the purport is.

Q Mr. Zola, with respect to rule 13, does that set forth the responsibility with respect to the protection of the cooling system of the vehicle as being that of the shipper?

A Yes, sir.

Q With respect to rule 13 on the same page, is that the $25.00 cost provision within which a driver may make repairs of a minor nature and charge them to the shipper when the delivery is made?

A Yes, and that's the provision upon which we made, again, the change in our bill of lading to reflect the proper figure of 25 as opposed to $20.00.

Q Would you look at rule 27 and tel me, do you provide a serice under that rule whereby for the charge shown you will inspect the vehicle and attempt to determine its difficulties continue--or to be suitable for the transportation that you are to undertake?

A Yes, we provide examination of the mechanical fitness by diagnostic testing in advance of the transportation.

Q If a shipper requests cleaning of a vehicle before or after transportation, do you provide for same under rule 27?

A Yes, sir.

Q Is there a charge for that?

A Yes, there is.

Q Do you on page 11 of this tariff publish the useable provisions found on what is commonly referred to as the uniform straight bill of lading?

A Yes.

Q And with respect to section 1B, is that the normal uniform bill of lading provision?

A Yes. And again that is--some of the language in that section is the basis for the language in our bill of lading, as indicated in my earlier testimony.

Q Mr. Zola, in your opinion, is there anything inconsistent in the bill of lading document, which is Exhibit No. 162 and the provisions shown as being on the reverse side of the uniform straight bill of lading in Exhibit No. 168?

A No, sir.

Q Now, from time to time does it occur that for one reason or another that vehicles which your company has been transporting are involved in an accident or become disabled?

A Yes, sir.

Q And would you tell us, sir, does your company have a claim department set up to handle that type of matter?

A Yes, sir.

Q Where is that claim department?

A At New York City.

Q What instructions have your other offices received with respect to the handling of claims concerning which they may be informed?

A The instructions in part are contained in Exhibit No. 179, which is part of the manual of every office operated by our company. And those instructions in essence are, that immediately upon notification of an accident, the owner should be notified, he should be informed to notify his insurance company of any potential claim and immediately the New York office of Aaacon should be notified so that we may file claims forms with our carrier, our insurance carrier, that is, and that under no circumstances is a local office to make settlement of a claim or to make promise with regard to a claim. The reason for that is so that all claims can be treated.in a uniform manner. We also have spelled out to our local office that for cargo claims for which we are liable as a carrier, our liability is primary and the liability of any other insurance would be secondary.

Q Is that statement contained in the third paragraph in the last sentence in Exhibit No. 179 starting with the words, "If the question arises, you may inform the owner"?

A "That our insurance is primarly responsible for all cargo claims for which our company is liable."

Q Are your employess, authorized, required or permitted to make any representation different from the representation with respect to your primary responsibility and liability for claims concerning which your legally liable?

A No, sir.

Q Did you hear testimony by the witnesses who appeared in behalf of the Bureau of Enforcement?

A Yes, sir.

Q Did you tell us whether you recall any testimony concerning these witnesses indicating that they didn't know what they had to do to file an original claim or what was required in the original claim or statements to that effect?

A Yes, sir, I have.

Q Have you given that some thought?

A Yes, sir.

Q What has your company undertaken and decided to do about that?

A Immediately subsequent to the hearings in this proceeding that occurred in Florida the week of January 20th, I believe, I drafted and had distributed to our claim's department a-- two documents. The first was an acknowledgement of claim.

Q I show you a letter and I ask you if the letter I show you is such an acknowledgement?

A Yes, sir.

Mr. Kiel: May I have this marked for identification.

Exam. Reilly: Marked for identification is Exhibit No. 183.

(Applicant's Exhibit No. 183, Witness Zola, was marked for identification.)

Q With respect to Exhibit No. 183, is that now or something like 183 required under the commission's new claim regulations?

A Yes, generally, about two months later, we found in 340 ICC, which has been referred to, that the commission now requires a similar document to be issued to the claimant within 30 days.

We normally issue this within the same day on which we receive any claim.

Q Was this prepared prior to the receipt of the decision in the case referred to?

A Approximately a month in a half to two months prior.

Q What was the second document that you prepared or had prepared for your claim's department?

A We had prepared a claim form for those shippers who wished to make a formal claim but did not feel that they were able to do so themselves and that form was made pursuant to the suggestions contained in 340 ICC.

Q I show you that form and ask if that is the form that you just referred to?

A Yes, sir.

Exam. Reilly: Do you want this marked, Mr. Kiel?

Mr. Kiel: Yes, I ask that this second document be marked for identificaton.

Exam. Reilly: Marked for identification is Exhibit No. 184.

(Applicant's Exhibit No. 184,
Witness Zola, was marked for
identification.)

Q Mr. Zola, while you indicated that this was based upon decision of the commission in 340 ICC, does the commission require that the carrier supply a claim form?

A No, it does not.

Q Why do you do it?

A As I mentioned, because we deal with members of the public who are often not traffic managers and because the commission has indicated that voluntary payment may not be made by a carrier unless certain information is in hand. In order to accomodate a claimant, we have voluntarily provided this form. When I said the commission suggested it, I mean the commission has required that certain evidence be filed with the carrier at the shipper's responsibilities. In order to help the shipper discharge this responsibility, we voluntarily drafted this form.

Q Does your company maintain a claim ledger?

A Yes, sir.

Q Briefly, what is your claim--what is a claim ledger, why do you have it?

A A claim ledger is a book, record, if you will, of each and every claim filed with our company to which we assign it a number, we mark down the bill of lading number, each of our bills of lading are prenumbered and lettered for identifcation. We mark down the office of origin and place of destination and the nature of the claim if it is susceptible of being put in that simple form.

Q Is that required by the clerks, that ledger?

A It has been required for some time, yes.

Q In addition to that, has the commission required for some time the filing of a claim report showing the number of claims handled, settled and so on?

A They have required that only for the past three months.

Q Do you file such a report?

A We have, sir.

Q When a claim is received and it's acknowledged, do you do anything with respect to notifying your insurance company?

A Yes, sir.

Q And do you have a form for that?

A Yes, we do.

Q I show you a document and ask if that document is the form which you use to notify your insurance agent for transmission to your insurance company?

A Yes.

Mr. Kiel: I ask that that be marked for identification, please.

Exam. Reilly: Marked for identification as Exhibit No. 185.

(Applicant's Exhibit No. 185, Witness Zola, was marked for identification.)

Q Could you explain how this document, No. 185, is actually used?

A Upon receipt of a notice of claim, or actually upon receipt of notice of information that there has occurred an accident or occurrence which may lead to a claim, we fill out a form similar to Exhibit No. 185, and we indicate as much underlying material as possible. What we would normally do is immediately call up the office of origin and request copies of all documentation be sent to us, and this form is used each and every time a further submission is made to our agent, Interstate Motor Carriers, which then makes a determining as to whether or not--the reason that we send it to Interstate is so that they can make a determination based on professional analysis as to whether or not they should notify the Home Insurance Company and American Plan and the further layer insurance companies up to three million dollars. If the accident involves a mere hitting of the and is a $25.00 claim by the state we wouldn't notify Lloyds of London.

Q Is this form used for cargo as well as liability and property damage claims?

A Yes.

Q In sum and substance, do you receive more than one claim or assertion of obligation against your company by third parties?

A Yes, and that's the reason why there are two lines there, to show whether or not it is a fair submission and they should have the insurance company set up a new file or whether the insurance company should dig out their old files. These are when we say further to the mailing of and then there is room for

And then at the bottom we describe the documents enclosed. And we normally would receive back from the insurance agent a copy of the document with their receipt on it indicating that they have gotten it so we know that the thing hasn't been lost in the mail.

Q In connection with an accident involving an automobile that you are transporting, do you do anything to determine from official records what report there might be of an accident?

A Yes, sir.

Q Do you have a form for that?

A Yes, sir.

Q I show you a form and ask if the form I have handed to you is that form?

A Yes, it is, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification is Exhibit No. 186.

(Applicant's Exhibit No. 186, Witness Zola, was marked for identification.)

Exam. Reilly: Off the record.

(Discussion off the record.)

Exam. Reilly: Let's recess until tomorrow morning at 9:30.

(Time noted 4:40 p.m.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

- x

In the Matter of: :

AAACON AUTO TRANSPORT, INC., : DOCKET NO.
Investigation and Revocation of MC-C-7287
Certificate, :

AAACON AUTO TRANSPORT, INC., : DOCKET NO.
Petition for Declaratory Order, MC-C-7287
: (Sub-No. 1)

AUTO TRIP USA, INC., : DOCKET NO.
Freight Forwarder Application FF-359
New York, New York. :

- x

Room E 2222,
26 Federal Plaza,
New York, New York,
Wednesday, March 22, 1972.

Met, pursuant to adjournment, at 9:30 a.m.

BEFORE:

JOSEPH A. REILLY, Examiner.

APPEARANCES:

(As heretofore noted.)

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PROCEEDINGS

Exam. Reilly: On the record.

RALPH J. ZOLA

previously sworn, resumed the stand.

DIRECT EXAMINATION (Cont'd.)

Q (By Mr. Kiel) Mr. Zola, you testified yesterday conerning questions and issues concerning public liability in public liability matters. With respect to your relationship as attorney in holding out to the public, will you explain that?

A Yes, the matters I testified on yesterday were the result of my research and the result of my conversations and meetings with officials of the Aetna Life & Casualty Company and the Home Indemnity Company, as well as conversations with the head of the section of insurance of the Interstate Commerce Commission, the Commissioner of Insurance of the State of New York, that is the office of the Commissioner of Insurance of the State of New York, the office of the Commissioner of the State of New Jersey, and reflects the general issue of primary and secondary liability between two insurance companies, that is the car owner's insurance company and the carrier's insurance company with regard to third party claims. It does not, however, reflect the holding out of Aaacon or its actions with regard to its indemnitors, its insurance companies. It has always been our position which we have asserted at legal actions at our own expense, that with regard to our shipping public, our customers, our insurance is obligated to pay these claims and I am referring toour liability insurance is required to pay third party liability claims and not just -- and that such obligation extends beyond the filing obligation that are filed with the Commission, BMC 90.

Q Mr. Zola, in the course of your business, do you ever receive written inquiries from customers or potential customers concerning your holding out with respect to damage to the cargo which is the passenger automobile which you would transport by driving it?

A Yes, sir.

Q Do you have a group of letters which dealt with such a question in December, 1971?

A Yes,sir. This would be typical of the material that we received and our response to it.

Mr. Kiel: May I have this identified, the original letter from the man is in the copy given to the Commission's reporter. I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 187.

(Respondent's Exhibit No. 187,
Witness Zola, was marked for
identification.)

Q Will you tell us whether or not this is a typical response?

A Yes, sir.

Q And if someone requested this information orally, would it be given?

A Yes, sir, and it is.

Q And your people have been instructed with respect to the type of response to give questions of the type posed in Exhibit 187?

A Yes, sir.

Q What is the response that they are required to give?

A A response similar to this in summary form. If a person has detailed questions, they normally would refer to the New York office or someone on my staff.

Q Did you hear the testimony of witness Tomany of the Interstate Commerce Commission, he testified at the initial portion of this proceeding and indicated from time to time that there had been correspondence between him and your company involving an attempt to insure that all complaints that he had received had been responded to by your company?

A Yes, sir.

Q And have you brought to this hearing a copy of a letter which you wrote to Mr. Tomany on August 30 with respect to exactly this matter?

A This is one of many similar letters that we have written from time to time.

Mr. Kiel: I ask that that be marked for identification.

Exm. Reilly: Marked for identification as Exhibit 188.

(Respondent's Exhibit No. 188, Witness Zola, was marked for identification.)

Q Do you recall the testimony of Mr. Tomany when I examined him with respect to the fact that certain of the letters which we had sent to him were not in the individual files or the reference was made to such communications?

A Yes, sir.

Q Now, would you look at Exhibit 188 with respect to Gilbert E. Bell and explain what you sent Mr. Tomany in connection with this matter as you dispatched Exhibit 188?

A Well, attached to Exhibit 188 were copies of our prior correspondence with Mr. Bell and the Commission -- that is to say with Mr. Bell, copies of which had been sent to the Commission pursuant to their request that the matter be handled, I think, normally within ten days. We attempt at every instance to reply on the date we receive the letter and in order to alleviate the difficulties that the Commission has in keeping these matters straight, we had started to enclose multiple copies of both our covering letters and the underlying letters when they cover more than one file.

Q For example, reference is made to one Sanford J. Rosen and you indicate that you are unable to locate your file on that matter. Did you hear the testimony of Mr. Redland which he discussed two matters --

A Mr. Rosen discussed that.

Q Yes. Do you find that you are unable to locate papers in your files and have some difficulties which would be similar to that explained by Mr. Tomany?

A Absolutely.

Q What is your policy, however, with respect to communicating with the representatives of this Commission when there is any question about anything that your company has done or has failed to do?

A Our policy and our practice has been to communicate forthwith in writing regarding the status of any claim or any question they have, even when that status is that we cannot locate the matter so at least the Commission is kept up to date with regard to our position and I, from time to time, in cooperation with Mr. Tomany or other members of the Commission staff ask them if there are any matters outstanding,just to make sure that their records are up to date.

Q And have your claim records always been available to representatives of the Commission when they have asked to see them?

A Yes.

Q Did you in 1971 transport an automobile for a Mrs. Nat Biart?

A Yes, sir.

Q And was there a claim involved in connection with that shipment?

A Yes.

Q Was that an interstate shipment?

A Yes, it was.

Q And did you receive from the claimant a letter when the claim was settled?

A Yes, we did.

Q I show you a letter with writing on both sides, and ask you if that is a letter which you had received?

A Yes, it is.

Mr. Kiel: May I substitute a photocopy of both sides of that letter for the original which is not the Commission's docket size?

Exam. Reilly: Yes.

Mr. Kiel: I ask that the letter be identified.

Exam. Reilly: Marked for identification as Exhibit

189.

(Respondent's Exhibit No. 189, Witness Zola, was marked for identification.)

Q Will you explain the circumstances surrounding the receipt of this letter?

A Yes, this letter was sent by the writer without any prior request by us. It's in our business unusual to find claimants even when they are totally satisfied, taking the time to voluntarily congratulate us for the way their claim has been handled. We find that most claimants, and indeed our experience has been with investigatory bodies, looking into the matter, most claimants never acknowledge satisfactory settlement of the claim. Most of them are hostile and angry. Today with insurance rates and insurance matters generally, specifically questions of the size of claims, false estimates, insurance companies being -- well, the atmosphere between a claimant and anybody who is responsible for an automobile, whom the claimants normally view as insurance companies, whether they are the carriers or the carrier's insurance company, is usually looked upon with animosity.

Q Do you recognize the name Betty Malone?

A Yes.

Q Who is that?

A Betty Malone is a fictitious name used by United Van

Lines so they can organize and deal with sales requests coming in for moving service and it is so advertised to the public. United Van Lines says call Betty Malone for moving consulting service.

Q Is it United or National Van Lines?

A United.

Q Reference in the hearing from time to time and in numerous documents, reference has been made to Bob Maxwell.

A Bob Maxwell is a name used by our company to -- it's not individual, it's the claims department of Aaacon.

Q When a letter is addressed to Robert Maxwell in your company, what does that mean?

A We know that that letter has to do with a claim and rather than have that letter float around our office, we are able to send it directly to the claims department. This is also true of telephone calls. People call us up long distance and in this way, the telephone operator on our end doesn't have to spend fifteen minutes hearing the story. If they ask for Bob Maxwell, we know that they want the claims department.

Q When claims responses are sent out by the claims department, is the name Robert Maxwell used to indicate from your end that this is a matter coming out of the claims department?

A Yes, sir.

Q Now, have you, during the period that you have been in business, inquired of the Interstate Commerce Commission with respect to your responsibility with respect to the Interstate Commerce Commission and its authority as it relates to the matter of loss and damage claims?

A Yes, sir, we have.

Q And did you receive a letter on April 19, 1971 from one Mr. Pfaller, director of Bureau of Operations concerning questions as to the jurisdiction of the Commission relating to the matter of claims?

A Yes, I did.

Q Is this such a letter?

A That is the letter.

Mr. Kiel: May I substitute a copy of that letter and ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 190.

(Respondent's Exhibit No. 190, Witness Zola, was marked for identification.)

Q Did your company from time to time have correspondence with the Commission and representatives of the Commission and conferences with representatives of the Commission attempting to find what tests or requirements the Commission had regarding the processing of loss and damage claims by your company?

A Yes, sir.

Q And --

A Not only by our company, but by all carriers.

Q And were you able to secure information and advice prior to the determination of the Commisison in 340 ICC 551?

Mr. Browning: Mr. Examiner, I object to this general testimony unless he is more specific.

Mr. Kiel: I will withdraw the question.

Q What advice were you able to secure from the Commission's representatives regarding this subject matter before this formal decision at 340 ICC 551 --

A Well, with regard not to the specific question of whether or not a claim should or should not be paid, but as to the question of whether or not claims handling practices or the general claims handling practices of the carrier were subject to jurisdiction, we were advised at that time that the Commission felt it had no jurisdiction and they were holding a proceeding --

Mr. Browning: Mr. Commission, I move that that be struck. We don't know who told him that. We have a letter here, 190, that speaks for itself.

Mr. Kiel: Mr. Examiner, I will agree to have it struck unless Mr. Zola will tell us who he spoke to and so on.

Q Will you do that next, please?

A Yes, very briefly.

We had transported automobiles via railroad between New York and Florida pursuant to a substituted service tariff provision that we had. We found that 33 per cent of the automobiles arrived damaged and we filed claims with the initiating carrier and the delivering carrier, Penn Central and Seaboard Coast Lines and my inquiries were with regard to the claims procedures of those companies.

Q Did you receive a response to those claims from the Penn Central Railraod?

A Yes, I did.

Q And is this letter the response?

A Yes, it is.

Mr. Kiel: May I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 191.

(Respondent's Exhibit No. 191,
Witness Zola, was marked for
identification.)

Q The claims were denied by the railroad?

A They were denied completely and in every part.

Q Did you then write the INterstate Commerce Commission on June 11, 1970 with respect to this?

A Yes, I did.

Q And I show you a copy of a letter and ask if that is the letter that you sent to Mr. Neil Garson, Secretary of the Commission?

A Yes, it is.

Mr. Kiel: I ask that that be identified, please.

Exam. Reilly: Marked for identification as Exhiibt 192.

(Respondent's Exhibit No. 192, Witness Zola, was marked for identification.)

A These claims were filed with us during the periodof November and December of the prior year, that is 1969, 1970 and we didn't, we were required by the Penn Central to supply them with, among other documents, the initial loading report which was in their possession, the final exception report which was issued by the Seaboard Coast Lines and which was in their possession, the registration of the vehicles, insurance policies concerning many of the vehicles, every document that was ever executed by any of the underlying shippers with us with regard to the vehicles and all of that information was requested.

After we supplied one item, we would get a letter asking us to supply them with something else. This went on for months and months. In June, we had a complete denial of our claim without any explanation whatsoever.

Q After you wrote your letter of June, 1970, did you receive responses from people such as Mr. Teeple and Mr. Falla with respect to this matter?

A Yes, we had several instances of correspondence in which I asked them what the position of the Commission was with regard to what I felt was the improper processing of claims and their letters as typified by the Exhibit 190, went in to the question of the Commission's jurisdiction of specific claims, that is to say whether or not one claim was for so much money and whether or not there was liability. I kept explaining that no, I wasn't asking whether they were liable on a specific damage. I wanted to know if the procedure of them telling us that they were not liable but not giving us any explanation, I wanted to know if that was legal.

Q Did that correspond with a letter sent by Mr. Falla --

A Yes, it did.

Mr. Kiel: I ask it be marked.

Exam. Reilly: Marked for identification as Exhibit 193.

(Respondent's Exhibit No. 193, Witness Zola, was marked for identification.)

Mr. Browning: Mr. Examiner, I am going to object if this witness is going to take off and answer a question which has not be posed which he just started to do, --

incidentally, while the reporter was marking the exhibit.

Exam. Reilly: All right, there's no question.

Q Mr. Zola, when you received this letter, which is Exhibit 193, did that end your correspondence and communications with the Commission concerning this matter in view of the indication that they had no authority to assist in this matter?

A Yes.

Mr. Browning: Mr. Examiner, I must object to that question since that is really not what was said here by Mr. Falla.

Mr. Kiel: I will withdraw that.

Q What did you do when you received this letter?

A This letter was the first indication to us, and I am not blaming anybody at the Commission, I understand that sometimes semantics are sometimes difficult, but as he indicated in the first paragraph, this is the first letter that he received that they went to the question of claims handling as opposed to settlement and the termination of an individual claim and in light of the statements that he made in the letter that they had no jurisdiction over claims procedures and decisions over carriers, I saw that there would be no reason to go further with the Commission.

Q Was any informal suggestion made to you by anyone as to how you might proceed on attempting to collect on those claims?

A Inasmuch as the Commission indicated their lack of jurisdiction, they suggested that we contact the railroad association.

Q And did you do that?

A Yes.

Q And did you receive a response from the American Association of Railroads?

A Yes, we did.

Q I show you a letter of August 14, 1970 and ask if that is a letter that you received?

A Yes.

Mr. Kiel: May I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 194.

(Respondent's Exhibit No. 194,
Witness Zola, was marked for
identification.)

Q What occurred subsequent to the receipt of Exhibit 194 in connection with this matter?

A Well, in light of the fact that the letter from the Association of American Railroads indicated that they weren't going to even pursue the matter in any respect or investigate it, we at that time commenced litigation against the Penn Central, Seaboard Coast Lines and the interconnecting carrier which was Norfolk & Western Railroad and that litigation is before the courts. The defense asserted by all three of the railroad carriers is that we had never given them written notice and this is after the voluminous correspondence over a period of six months with these railroads.

Q Now, in connection with the payment of freight charges to your company when there is a question of whether or not there is damage to a car which you are transporting, certain of the witnesses on behalf of the Bureau indicated that they retained a portion of the freight charges instead of paying that money to the driver as was the ordinary course of handling; do you remember that type of testimony?

A Yes.

Q Did your company receive a communication from a Mr. Frey of the Interstate Commerce Commission with respect to the handling of claims in this manner?

A Yes, sir.

Q I show you a letter and ask if that is a copy of the letter that you received from Mr. Frey?

A It is, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 195.

(Respondent's Exhibit No. 195, Witness Zola, was marked for identification.)

Q Did you respond to the letter which is Exhibit 195?

A Yes, I did, sir.

Q I show you a letter dated June 18, 1969 written one day after the date stamped on Exhibit 195 and ask if that is your response to the Commission's letter?

A Yes, it is.

Mr. Kiel: I ask that that copy be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 196.

(Respondent's Exhibit No. 196, Witness Zola, was marked for identification.)

Q Did you thereafter in December of 1969 receive from Mr. Tomany a letter concerning this same matter which has a number 211241?

A Yes, sir.

Q And I ask you, is this a copy of the letter that you received from Mr. Tomany?

A It is.

Mr. Kiel: I ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit

197.

(Respondent's Exhibit No. 197, Witness Zola, was marked for identification.)

Q Subsequent to the receipt of the letter, which is Exhibit 197, did you respond to Mr. Tomany?

A Yes, sir.

Q I show you a copy of a letter from you to Mr. Tomany dated December 19, 1969 regarding the same manner and ask if that is the response?

A It is.

Mr. Kiel: I ask that it be identified.

Exam. Reilly: It will be marked for identification as Exhibit 198.

(Respondent's Exhibit No. 198, Witness Zola, was marked for identification.)

Q Mr. Zola, would you tell us what your company has done to comply with the requirement of the Commission made known to you in this series of letters, 195 through 198?

A Well, our feeling at the time in December of 1969 was, in light of our responses, that would be Exhibits 196 and 198 and the fact that we didn't hear from the Commission further in this matter, we felt that we had explained the matter to the Commission's satisfaction, especially in light of the fact that this had been assigned a formal complaint number and I imagined that the matter was closed.

However, as a result of suggestions that I seem to have caught in the way of implications in the course of this proceeding and the Commission's report 340 ICC, we have eliminated from our bill of lading any practice relating to the adjustment of claims directly between the owner and driver and we no longer permit that.

Q Now, would you briefly explain what happens to a claim that is received in your office, how it is processed and what investigations are made and so forth?

A Yes, sir.

Mr. Browning: Now, Mr. Examiner, I am going to object to this line of questioning on the grounds that unless we tie it down to a specific claim, I think it's irrelevant and immaterial.

Mr. Kiel: Mr. Examiner, one of the issues that the Commission has brought up to be considered is respondent's treatment and handling of claims, plural, for damages or losses to property arising from such transportation, et cetera. I submit, if you don't give us a chance to tell you what we do, then we can't meet the test --

Exam. Reilly: You may testify as to the practices and policies of the company.

A When we receive a claim -- well, let me take them separately.

If we receive an oral claim, that is to say if we get a telephone call or if we get an indication of damage from a driver or a police report, although there has not been a claim filed by the shipper or the consignee, we normally at that point request in writing a claim from the shipper or consignee.

If we receive a written complaint, we open up a claims file. At that time we attempt to contact the driver and obtain an accident report, we also obtain photographs of the damage to the vehicle if the complaint is one of damage to the vehicle, and estimates. We then notify our insurance carriers and we also suggest to the car owner in line with our understanding of the law, that for his own protection he notify his insurnace carriers, both collision and liability.

If the individual has any questions with regard to whether he should notify his carrier or whom he should notify, should he notify his broker, agent or carrier directly, we suggest to him that if he sends us a copy of his insurance policy, we would be happy to help him look into the matter and offer of a suggestion.

If we feel that the accident is the type where obtaining information from a police report would be useful, we request a police report.

When I referred earlier to the accident report, that would be the accident report made by the driver and if there is -- on that report there is a space for witnesses and we usually get a witness' statement.

On occasion, if necessary, if the estimates are somehow unusual, we may or for other reasons we may send out professional adjustors. In addition, we are subscribers to a series of reports called Motors Crash Book and Motors Crash Book Illustrated, which is a professional guide used by practically every repair shop and company dealing with every repair company in the United States, which shows a breakdown and the cost of replacement and the time involved for replacement of every part in an automobile.

We also consult the National Markets Reports which are referred to erroneously as the Blue Book. It's not the Blue Book, but in fact, it's a red and blue book.

Q You are talking about the color of the cover?

A Yes. On occasion where circumstances warrant it, in our discretion we request affidavits from different people who might have information relating to the accident and on occasion we have conferences with our insurance carriers or with our insurance brokers concerning the handling of different types of claims, unusual and new situations.

We consult with professional adjustors on questions of damage and estimates submitted. If the accident or the claim indicates that there has been questionable driver activity on the part of our driver, and our investigation reveals that such is the case, we take the driver's information from the local office and we place it on what we call the bad driver list, what is simply a filing system throughout all of our offices in the United States in cooperation with other companies, which permits us to avoid the use of such a driver on other occasions.

We also request from the shipping office of our company, that is the office in the city from which the car was transported, all the underlying documents and driver processing information.

Q Do you ever request photos to show the damage?

A Yes, I mentioned that we do obtain photographs, we also obtain a condition report of the condition of the vehicle when received by us as indicated on our bill of lading.

Q Do you ever call a claimant if there is a question?

A Our telephone bills in our company run over $100,000 a year and a lot of that has to do with calling claimants.

Q Do you ever write to claimants?

A We do on many occasions.

Q Is your claim practice being revised to conform to the requirements of the Commission in 340 ICC?

A We anticipated many of them and we have conformed completely to those suggestions.

Q Have you brought an exhibit to this hearing showing the typical notices that are used in your company and between your company and others which refer to drivers who should or should not be used?

A Yes, sir.

Q And I show you a multipage document and ask you if that is an example of that type of situation?

A Yes, sir. This was received by us from another company.

Mr. Kiel: May I have that marked for identification, please.

Exam. Reilly: Marked for identification as Exhibit 199.

(Respondent's Exhibit No. 199, Witness Zola, was marked for identification.)

Q Will you tell us your opinion with respect to this procedure, whether it's good, bad or indifferent in assisting you to do a better job for the public?

A The procedures that we follow with regard to claims in general are subject to constant revision and we have attempted to and I think our claims record when taken in totality shows that we have in fact done an efficient job with regard to the processing of claims and that we have in the vast majority of cases, successfully settled claims with regard to members of the public with regard to the use of this intercompany bad driver material, I would say that although all companies, when they have a volume of transportations, experience accidents and in dealing with human beings, some drivers who do a less than responsible job, the cooperation between the companies with regard to the claims such as indicated on the exhibit just referred to which we received from another company, assists all companies in reducing the use of peoples whose services are questionnable and detrimental to the public.

Q Now, have you in the past received claims from people with respect to alleged damage where no amount of money was specified in the claim?

A Yes, sir.

Q And did you hear the testimony of certain of the witnesses who testified here that while they had complaints about damage to their automobile, that they never notified you concerning the amount that they expected you to pay them?

A Yes, sir.

Mr. Browning: Mr. Examiner, unless he ties this thing down --

Mr. Kiel: I will tie it down.

Q Did you hear the testimony of Witness Clendenon?

A Yes.

Q Did you ever receive a written complaint from Witness Clendenon, that certain damage had occurred to his car?

A Yes, we did.

Q Did he ever tell you that his damage was so many dollars?

A No, sir.

Q Have you ever received a claim or notification in writing from a shipper, the one who testified here, that there had been some damages and said that the amount is approximately or about or in the neighborhood of so many dollars?

A Yes, sir.

Q And now, sir, with respect to the determination of the Interstate Commerce Commission and in its decision at 340 ICC, what have you learned about handling those claims?

A The Commission has instructed that under those circumstances the carrier may not voluntarily make payment for such a claim.

Q And will your company be guided accordingly?

A Yes, sir.

Q However, you advised us that if a shipper requested a form of claim, you are now prepared and are sending the form Exhibit 184?

A Yes, sir.

Q Do you ever ask a shipper who hasn't in the past used this form to tell you how much the damages are?

A Yes, sir.

Q And in all cases, have they done so?

A No, sir.

Q Would that include some of the witnesses who testified in behalf --

Mr. Browning: Objection.

A Yes, sir.

Exam. Reilly: Objection overruled.

Q Now, is the question of damages, that is the amount of money that you are responsible for, a difficult one in your opinion in settling claims?

A It's a very difficult one.

Q Now, has the Commission's decision in 340 ICC helped you in that respect?

A Well, it has confirmed what our understanding was with respect to these. Specifically as I discussed informally with people in this hearing room, certain claims are very difficult to dispose of because it's difficult to ascertain the facts surrounding the damage. Moreover, in our particular industry, as opposed to the motor carriers in general, because we are transporting automobiles, there has definitely opened in the public mind of many individuals, certainly not all and I certainly couldn't even say a majority, but a substantial portion of the public, a belief that a damage claim asserted with respect to an automobile is a way to make profit over and above --

Mr. Browning: Mr. Examiner, I object to that. It's immaterial and irrelevant --

Exam. Reilly: Objection sustained and the testimony is stricken.

Q Mr. Zola, would you explain in what manner you have been instructed, advised or helped by the recent decision of the Commission with respect to the amount of the monies, damages that your are responsible for when a claim is proper and you are legally responsible for the damage?

A The Commission has indicated to us that we are responsible for the reasonable damage caused by us to any vehicle for which we are legally liable and that amount is to be paid.

Q And if part of the transportation charges are not paid as the Commission indicated, how would that be handled in resolving claims?

A That that amount is to be reduced from the amount of any settlement of a claim.

Q Now, has the Commission advised you with respect to the measure of damages as it relates to the value at destination of an automobile?

A Yes, they have advised us that the measure of damages --

Mr. Browning: Mr. Examiner, I am going to object. If he is talking about ex parte 263, it speaks for itself. If he is talking about something else, it ought to be made more specific --

Mr. Kiel: We are talking about 263. I am going to make a statement. I hope it doesn't offend Mr. Browning, but this decision is voluminous. We have carefully marked up the parts that I think the record should be concerned with and if what I say now is improper, I will agree to have it stricken, but the Commission at page 569 of that decision indicated that the measure of damages is the value of the property at destination.

Now, I think it's worthwhile having that in the record. Surely that is not objectionable and it would make the resolution of this so much easier and quicker.

Exam. Reilly: Isn't that the answer to the question you asked.

Mr. Kiel: That was, and I said I am going to make that remark just to show what we were attempting to establish.

Exam. Reilly: Well, it's in the record and I don't find it objectionable.

Q Mr. Zola, we heard testimony by Mr. Wolfewith respect to an automobile that required repairs, we heard testimony of a Mr. Browder with respect to a similar situation. In your opinion, is there an obligation, in fact, a duty upon the owner of the car to mitigate damages?

A Yes, sir, and this is reflected in the report of the Commission, 340 ICC.

Q Have any of the shippers that you served where an automobile was damaged, attempted to sell you an automobile in damaged condition?

A Yes,sir, General Wolfe did among others.

Q And in your opinion based upon the Commission's decision in 340 ICC, is that an obligation of your company?

A No, sir, as a matter of fact, at page 607 the Commission condemns such actions on the part of shippers.

Q Now, in order that we could better visualize some of the methods that you use in establishing the amount of damage, I show you a page which is entitled in the left-hand corner "Ford Automatic, four speed transmission included" and I ask you what that is?

A That is a page I copied out of the NADA reports and it's a typical page showing the various valuations of automobiles in saleable condition, in perfect physical and mechanical conditions, used automobiles.

Q Do you use that in the settlement of claims?

A Yes.

Mr. Kiel: I ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 200.

(Respondent's Exhibit No. 200, Witness Zola, was marked for identification.)

Q Does your claims department keep current with respect to this information shown on Exhibit 200 and similar information?

A Yes, sir, we are subscribers to the National Market Reports and in addition, we continuously study the revisions contained in the front of those reports which from time to time change and showing a difference in the measuring of values indicated therein, for example, the words at the top, average finance, average wholesale and then average retail values of very specific explanations.

Average wholesale value would be from my understanding, the typical measure of damages that a court would reward because it includes the refinishing of the car in a perfect condition whereas the average retail value includes service commissions and a 90 day retail warranty which would normally not be a measure of damages in a court of law.

Q In the same vein, Mr. Zola, does your company utilize what you call a motor carrier crash book to determine the amount of expense that would reasonably be incurred in repairing an automobile which was damaged?

A Yes, sir.

Q And have you prepared for this hearing an extract of four pages showing the typical contents and explanations contained in that book?

A Yes, sir.

Q I show you that multipage copy and ask if that is an abstract which you have made from the motor carrier crash book?

A Yes.

Q Or the Motor Crash Book, I should say.

A Yes.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 201.

(Respondent's Exhibit No. 201,
Witness Zola, was marked for
identification.)

Q Would you briefly explain what the two first pages are and the last two pages are?

A The two first pages are two sides of an open page in a looseleaf form book, they are kept up to date by subscription, showing in illustrated form the different parts on the assembly of a station wagon body panel, a sport wagon roof and illustrating different parts, what each little part is, how it looks and how it would be assembled.

Q And the last two pages?

A The last two pages indicate the cost for the new -- for new parts from GM centers throughout the United States.

Q Let's take specifically, on the third page there is an item, outer panel 1969, 122.75. Now, what does that mean?

A That means that without the bumper on the car, the outer bumper costs $122.75, that is if a new one is purchased to replace one.

Q What is the 18.0?

A The 18.0 would be an indication of the amount of labor, the hours of labor needed to replace that item.

Q Have you familiarized yourself with these types of situations when they have occurred to be able to determine with the assistance of an adjustor, if necessary, the propriety of an estimate that you receive from a garage?

A Yes, sir.

Q In connection with your claims experience for your company, what has been your epxerience with respect to the estimates, have they always been correct; have they always been wrong or what?

A No, a percentage has been correct and a percentage has been wrong and each one needs separate scrutiny and individual judgment by experienced hands before determination can be made.

Q Now, would you tell us approximately the number of automobiles that your company transports in a year?

A Approximately 20,000.

Q And with respect to complaints of all kinds including claims, what number did you have last year?

A Last year we had 587, I believe. Between 580 and 590.

Q What percentage would that be of your total shipments, then?

A I believe it's under three per cent.

Mr. Browning: We will stipulate that it's under three per cent.

A It's 2.9 per cent.

Q Now, with respect to that portion of the complaints that were actually claims, what portion of them were paid without further investigation and problems and so on?

Mr. Browning: Mr. Examiner --

Mr. Kiel: I withdraw it.

Q Please give me some information as to the claims settled without problems and the amount, just give me the percentage of claims settled without problems?

A The percentage of claims that we settled without any difficulty whatsoever runs between 66 and 75 per cent of all claims and in a dollar amount of it, some $60 million worth of cargo that we ship a year, the claims paid out -- the claims asserted on that are approximately some $60,000 and two-thirds of that are settled upon receipt without any further difficulty between us and the claimant.

Q If 75 per cent are settled without problem, what are the other 25 per cent, what do they represent, what types of situations?

A Many of them represent the following types of situations: Many of them represent non-claim complaints, some of them represent complaints for non-money damage, such as the driver was rude, things of that nature. Several of them are claims for areas in which our company is not liable such as mechanical difficulties, of course, through no fault of the carrier and a percentage of them are claims where there is liability on the part of our company, but where we feel the amount claimed is excessive or unsubstantiated.

Q Do you receive claims after you receive what is known in the transportation industry as a clean receipt?

A Yes.

Q And do those often pose problems?

A They do, yes.

Q Can you tell us the percentage of your claims that are settled within thirty days?

A Approximately 50 per cent of all of our claims are settled -- when I refer to claims, I am referring to hard claims, proper claims for monitory amounts, approximately 50 per cent are settled within thirty days.

Q Can you tell us what percentage of claims are settled within 120 days?

A Within 120 days, I would say approximately another 40 per cent are settled within 120 days.

Q Is it always possible to get substantiation and sufficient detail to settle a claim within that period of time?

A No, sir.

Q Have you familiarized yourself with the Commission's requirements for the future with respect to the time period within which you must notify a claim that you received its clain and the period within which you must settle the claim or decline the claim or else notify the claimant each 60 days why you haven't done so?

A Yes, sir.

Q And do you intend to comply with that?

A Yes, and I believe we have in the past.

Q Now, have you undertaken to investigate the method of claims handling which is used by other carriers?

A Yes, sir.

Q Have you spoken with other carriers about that?

A Yes, I have undertaken as thorough an investigation as time has permitted me in the course of my work to determine what other carriers experience, specially older carriers, have with regard to claims handling so we can be guided by that experience where applicable.

Q Is that automobile carriers?

A Yes.

Q I notice next to your seat is a book called Freight Claim Rule Book. Will you tell us what that is?

A This is the Freight Claim Rule Book of the American Trucking Association, which I had requested from them and which I received.

Q Do you use that to assist you in handling and processing claims?

A We have reviewed the book and we use parts of it. We find other parts, according to our understanding, to be in violation of law and to be excessively harsh on shippers and those parts we have not used.

Other parts have reflected and suggested the experience of the trucking industry and have in many instances suggested methods to us which are very expeditious and beneficial to the public and some of which have been adopted by the Commission in its report.

Q In addition, have you also received inadvertently a lead into the claims practices of a large carrier called REA Express?

A Yes, sir.

Q And I show you a letter and ask, a multipage letter with some attachments, and ask if this was received by you and there is a reply and response by you?

A Yes.

Mr. Kiel: I ask that this be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 202.

(Respondent's Exhibit No. 202,
Witness Zola, was marked for
identification.)

Q Very briefly, what does this series of papers represent?

A Inadvertently a claim which was apparently investigated by the INterstate Commerce Commission concerning REA Express and the fact that REA Express had stalled the claimant for nine months and then turned down his claim on the ground that it had not been properly filed within the nine month period.

Mr. Browning: Mr. Examiner, please --

A I don't mean to characterize.

Q Please don't.

A Well, a letter explaining the claims procedures of REA Express was sent to us inadvertently and in the beginning nobody noticed that it wasn't addressed to our company, it was on a mimeographed form which the Commission uses with respect to certain inquiries and it started to get processed by us and resulted in utter confusion in our company. This was not addressed to Bob Maxwell. We turned it to the Commission and I first called REA Express. I was concerned whether they were going to be able to reply to the Commission in the proper time which was suggested on the front, fifteen business days and as a result, I got into quite a bit of correspondence and contact with the claims department of REA Express and I was able to have conferences with them and discuss with them their claims handling procedure.

Q Now, did they make available to you certain basic material that they use in handling their claims processing and responses?

A That information was made available to me.

Q And I show you a series of papers, the original of which is blue and ask you if those were the papers that you received in that connection?

A Yes, I received those papers in connection with my investigation of REA Express claims handling procedure.

Mr. Kiel: May I ask that that be marked for identification?

Mr. Browning: I am going to object to any questions about this exhibit because it certainly is not relevant.

Mr. Kiel: We are not going to go into it. It's just relevant in my opinion to show that the carrier has been diligent in trying to find out how it should act and it has gone to experienced people to get this information.

Exam. Reilly: Well, it will be treated for that very limited purpose and I see no point in asking any other questions about it. It will be marked Exhibit 203.

(Respondent's Exhibit No. 203,
Witness Zola, was marked for
identification.)

Exam. Reilly: We will take a recess at this point.

(Recess taken.)

Exam. Reilly: On the record.

Q (By Mr. Kiel) Did you hear the testimony of certain of the witnesses for the Bureau of Enforcement with respect to their chagrin at receiving denials of their claims through the use of preprinted form letters?

A Yes, sir.

Q And as a result of that and as a result of receiving Exhibit 203, what did your company do?

A I had been in Washington initially with Mr. Len Schloer and he showed me some machinery that was used by the Bureau -- the Commission in handling correspondence which would have automatic paragraph selections on preprinted tapes so that individuals could get individually typed letters based on selected materials.

Mr. Grimm of REA Express has a similar setup of machinery and the material in Exhibit 203 is the actual paragraphs which they use concerning the handling and declination of claims on a preprinted form.

As a result, our company has installed certain automatic typing machinery which permits us now to respond to each letter on an individually typed basis so that the people would not be offended with regard to offset or photostated forms.

Q Have you made any changes in the type of responses that you now give when a claim is declined or when additional information is requested?

A Yes, sir. Although we did not adopt hardly any of the language contained in the REA Express for two reasons; first, I felt some of it was illegal, and secondly, a lot of it did not apply to motor carrier transportation, we have eliminated from our claims procedure, informing individuals that their claims are declined solely on only the basis of having signed what is called a clean bill, that is to say, having acknowledged in writing receipt of delivery or by the fact that they have paid the driver upon the destination.

In addition, we are now undertaking a fuller explanation of the results of our investigation including a description of any mechanical occurrences which led to or constitute the claims of the individuals and it's our hope that these fuller explanations will make our relationship with some of the public which has been dissatisfied, more harmonious.

Q How many people do you have in your claims staff and help in your claims staff?

A We have five full time people and we have about six or seven peripheral people.

Q One of the complaints of certain of the witnesses dealt with alleged delays in securing the transport of an automobile and in one respect it dealt with the movements from and to Florida during what is known as the "season", where a lot of people have their cars moved down or back depending upon the time of the year. Do you remember that testimony?

A Yes, sir.

Q What, if anything, has your company done about that?

A What we have done was, in order to reduce this complaint to a minimum, which we have been able to do this past winter of '71-72, reduced the number of vehicles we will accept for shipment to that number which we feel we reasonably can accommodate with casual drivers of course, professional drivers service is always available but many people don't wish to pay the expense. We try to coordinate the supply of drivers with the supply of vehicles in a more harmonious fashion.

Q Do you accept cars for transport from people after informing them that there will be a delay and informing them that drivers will not be readily available?

A On occasions, specially where the customer indicates that he understands the situation, but it's rarely done. In most instances if the supply is clear to us in our business experience, that we cannot accommodate a car within a reasonable period of time, we will decline to accept it.

Q If the shipper indicates that he can wait and that he will wait and that he wants you to do it, do you accept the car?

A Yes, sir.

Q And has this helped your public image as far as you are concerned?

A Yes, it has reduced complaints in the Florida traffic to almost a nullity.

Q Can you tell me specifically what your company did in November of 1971 in this respect?

A We declined a substantial number of vehicles tendered to us and the business and revenues connected therewith. We just reduced -- well, we explained the situation and those customers who felt that they wouldn't wait and alternatively wouldn't pay the professional driver tariff which at that time we had instituted, we told them we couldn't handle their traffic.

Q Was every customer treated on a first come, first serve basis?

A Oh, yes.

Q Is the availability of drivers or are the availability of drivers as important a part of your business as the number of cars available for transport?

A Definitely.

Q Now, in processing claims, do you have access to various traffic magazines which are public, published in the field, for example, Traffic World?

A Yes, sir, we subscribe to them.

Q And in Traffic World, is there any weekly article which relates to the handling and processing of freight claims?

A Yes, there is.

Q And are you familiar with that?

A Yes, we not only -- we take them out of the magazine and we keep them in a file, those that are relevant to our business.

Q I have a Traffic World issue of December 20, 1971 and I show you page 4 and a copy of page 4, and ask you if you are familiar with that?

A Yes, sir, this is one of the pages that we have taken out of it.

Mr. Kiel: May this be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 204.

(Respondent's Exhibit No. 204, Witness Zola, was marked for identification.)

Q How has this assisted you in the handling of claims settlements?

A Well, this has assisted us on the question of whether or not we are responsible for or should voluntarily make payment of certain charges which are borne by the shipper in presenting his claim to our company.

Q Now, did you hear testimony of certain witnesses who indicated that they thought you should pay for their telephone calls which were an expense in connection with getting information which would permit them to file a claim?

A Yes, sir.

Q And do you think that this reference would apply to that type of situation?

A Yes.

Q Did you see page 15 of the February 21, 1972 issue of Traffic World?

A Yes, sir.

Q And I show you page 16 and 16 and ask if there is an article there with respect to the question of special damages?

A Yes, sir.

Mr. Kiel: May I ask that that two page document be marked for identification.

Exam. Reilly: Marked Exhibit 205.

(Respondent's Exhibit No. 205, Witness Zola, was marked for identification.)

Q Has this helped you in the handling of claims?

A Yes, it has lent further weight to the conclusion we had reached by our prior research, that on the question of special damages such as car rentals in the case of transporting automobiles, prior notice has to be given to the carrier prior to or at the time of transportation. Our earlier research was the basis of the inclusion of that provision in our bill of lading which is an early exhibit of ours in this and this confirms that.

Q So that pursuant to the provisions of your bill of lading, which is Exhibit No. 135 --

A No, 159 is the old one.

Mr. Browning: 162.

Q -- 162, you have a notice to the shipper that if they expect you to be responsible for special damages, they must notify you in writing?

A Yes, sir.

Q Prior to the shipment?

A Yes, sir.

Q Have you kept abreast of the problems involved in the inherent defect problems which might exist in connection with automobiles that your company transports or may be called upon to transport?

A Yes, sir.

Q I show you a newspaper article and ask if you can identify that as an article in the New York Times on March 14, 1970?

A Yes, this is an article that we cut out of the New York Times on that date.

Q And was one of the automobiles which you transported and which was involved in an accident, due to what we contend to be a mechanical defect, the year and make of the motor vehicle involved in this accident?

A Yes, sir.

Mr. Kiel: May I ask that this be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 206.

(Respondent's Exhibit No. 206, Witness Zola, was marked for identification.)

Q What automobile -- what shipper, rather, who testified in this proceeding testified with respect to a 1965 Pontiac?

Mr. Browning: Mr. Examiner, I submit that this is irrelevant and immaterial in this proceeding. We don't know what the facts were in this particular case. I don't know how we can relate that to a particular car.

Exam. Reilly: Can you tie this down to the defect?

Mr. Kiel: I think we can, yes.

Q Do you remember --

A The '66 Pontiac, I believe, is the same as the Whitney vehicle.

Q This is the '65 Pontiac.

A Then I would have to check that out to make sure that it's the same.

Q All right. Have you also carefully watched the required recall of automobiles of the type that you transport?

A Yes.

Q And do you have an article from the February 21, 1972 New York News involving the required recall by the

National Highway Transport Safety Agency involving six million Chevrolet automobiles?

A Yes.

Q And that is the New York Post, not the News?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 207.

(Respondent's Exhibit No. 207
Witness Zola, was marked for
identification.)

Q Does your company transport from time to time, automobiles of the type mentioned in Exhibit 207?

A Yes, sir.

Q And similarly, have you an article about the safety recall of automobiles from the Time Magazine issue of December 13, 1971?

A Yes, sir.

Mr. Kiel: I ask that be marked for identification.

Exam. Reilly: It will be marked as Exhibit 208 for identification.

(Respondent's Exhibit No. 208,
Witness Zola, was marked for
identification.)

Q And do you transport in your business, the vehicles covered and referred to in Exhibit 208?

A Yes, sir.

Q Do you know, according to the reports of the National Highway Safety Administration whether all of the vehicles with these inherent defects are repaired and fixed?

A According to General Motors own figures, only approximately two-thirds are even recalled on the defects that have been discovered to require a recall, much less all the rest of them.

In other words, one-third of the owners don't even respond to recall notices on those defects that have been to be found inherent in every vehicle, much less those that are inherent in specific vehicles.

Q With respect to the handling of claims received by your company --

Mr. Kiel: Strike that.

Q Have you read the decision in the Commission's decision in 340 ICC at pages 549, 605 and 524 and page 607 when reference is made to fraudulent claims submitted by persons to carriers?

A Yes, sir.

Q Do you have that as part of your problem?

A We do indeed.

Q Does your research with respect to the claims procedures of the American Trucking Association indicate whether or not that is an industry-wide situation as far as the motor carrier transportation business is concerned?

A Yes, sir.

Q And what have you determined with respect to the railroad picture?

A The railroad picture and the trucking picture is quite similar as indicated in the appendix of the ICC report to which you have referred.

Q And would those be at pages 697 and 698 of that report?

A Yes, and at page 689.

Q Did a large motor carrier, namely George Jay Highway Express report to the Commission in that proceeding with respect to the receipt of fraudulent claims?

A Yes, their records indicate that more than half of its large losses resulted in fraudulent or questionable tactics on the part of the complaining shipper.

Q Will you tell us whether or not you have had similar experience in receiving claims that you have felt are not proper?

A We have had an experience in some of our claims, yes.

Q Will you please detail typical situations and examples of these instances?

A Will you excuse me for a moment? I will get some of my documents on this.

APPENDIX ////

Q Sure.

A Typical of our experience with regard to claims and I am not referring to claims where there is a dispute and we merely feel that the claimants claim is excessive or on the high side or may include items for which we are not liable and which there is some confusion about, but occasions where we feel there has been gross misrepresentation and fraud on the part of the claimant.

One such case involved the car belonging to a Mrs. Robert Michaels which we transported from California to Norfolk, Virginia. In that case, the car suffered a mechanical breakdown in Gila Bend, Arizona. The car was left there for repairs by the driver which were authorized by the shipper. The car was repaired and thereafter we were not instructed to ship it. Rather, the shipper sued us in Norfolk, Virginia for the full value of the car claiming that we had stolen the vehicle. Our subsequent investigation revealed that in fact, the vehicle had been taken by her estranged husband after he paid for the mechanical repairs in question and this was a device that she was using in order to obtain from us the value of the vehicle which she felt was rightfully due her as part of her separation agreement from her husband.

In that regard I had correspondence with the garage.

This was after we had to defend a lawsuit and incur heavey investigatory expenses leading to the conclusion.

Another typical case involving misrepresentation and fraud concerns a shipment of a vehicle belonging to a Cletus Myrick; a car from Anaheim, California going to Atlanta, Georgia which order was placed with us through the Hunt Food Corporation by whom Mr. Myrick was employed. The claim presented to us was solely and only after destination for exterior damage to the vehicle, that is as though the vehicle had been in a collision. The claim was not presented for sometime after the delivery date which was February 16, 1970. At that time, Hunt Foods traffic department submitted to us in substantiation of the claim, a bill of lading indicating the transportation of the vehicle had been completed.

Q Now, are there any papers that you want to have marked for identification?

A Yes, I would like to have marked for identification the letter from the garage in Gila Bend, Arizona in the Michaels matter.

Q Which letter was received by your law firm?

A Yes, our law firm, after May 15, 1970.

Q And that is with respect to the Michaels matter?

A Yes, it is.

Mr. Kiel: I ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 209.

(Respondent's Exhibit No. 209, Witness Zola, was marked for identification.)

A In the Myrick matter, the first document submitted to us, that is the first bill of lading submitted to us by the Hunt Foods traffic department is the following document and I would like to have that marked.

Mr. Kiel: May I substitute a copy for the original?

Exam. Reilly: Yes. Marked for identification as Exhibit 210.

(Respondent's Exhibit No. 210, Witness Zola, was marked for identification.)

A Now, the lower right-hand corner of Exhibit 210 indicates -- is blank and whited out.

Q Now, is that the way the document was submitted to you by the claimant?

A Yes, this is the actual document as submitted to us by the claimant.

Q All right. Would you go on, please.

A Unbeknownst to the claimant, we had in our possession, the original of that document. He had sent us a copy which was his Xerox copy, but we had the original of that document which I would like marked for identification.

Q Do you have the original here?

A Yes.

Q And these are exact copies of it?

A Yes.

Mr. Kiel: May I substitute the copies for the original?

Exam. Reilly: Yes. Marked for identification as Exhibit 211.

(Respondent's Exhibit No. 211, Witness Zola, was marked for identification.)

A This copy which was in our possession, unbeknownst to the Hunt Food traffic department and Mr. Myrick, which was the actual original, indicated that the exterior was okay, that is to say there was at the time we picked up the car, a scratch indicated on the left front door and the left rear fender, but that the exterior was received in the same condition as it was picked up by our company.

Q It says "exterior o.k." on your copy?

A Yes, and it's signed by Cletus W. Myrick, the registered owner. Our investigation indicated that there was subsequent damage to the vehicle --

Q Subsequent to when?

A Subsequent to our delivery of the vehicle and by seeking to cover that, cover up that voluntary note which was made by the registered owner of the vehicle, they were seeking to have our company pay for that damage and in this regard --

Q Was there a claim filed against you?

A Yes, there was. In this regard, with regard to that claim we, after long debate in our company, decided that we could not press the matter further because of the limited possibility of recovery on our part, even of our investigation costs and we explained to Hunt Wesson Foods our decision by letter of September 9, 1970, which I would like marked for identification.

Exam. Reilly: Marked for identification as Exhibit 212.

(Respondent's Exhibit No. 212, Witness Zola, was marked for identification.)

A We indicated in that letter the situation and we felt that it was not fruitful to ascribe any allegations as to the nature of that conduct. We merely set it forth factually.

Q Then what did you do?

A We wrote to the Interstate Commerce Commission about this type of situation which had arisen before.

Q And did you receive a response from them?

A Yes, we did. We received a response from Mr. Delaney.

Mr. Kiel: May I substitute the copy for the original?

Exam. Reilly: Yes. It will be marked as Exhibit

213.

(Respondent's Exhibit No. 213, Witness Zola, was marked for identification.)

Q Subsequent to the receipt of Exhibit 213, did the Commission make a formal pronouncement as to their intentions with respect to shippers who file improper claims?

A Yes, it finally came out in -- strike that -- I don't mean to imply any criticism, but it came out in ex parte 263.

Q Did the Commission indicate what they intended to do in the future?

A Yes, they indicated that they intended to take action against shippers who filed such claims.

Q Now, would you then give us -- go on with your examples of this type of claim, please.

A Yes. Another example of this type of claim involved a Mr. Sam Riccobono. Mr. Riccobono was an old customer of ours and has shipped cars on many occasions and were it not for the fact that it's a fraudulent practice, the gall that he displays in his practices would be laughable.

Q Will you explain what happened?

A Each time Mr. Riccobono ships a vehicle with us between New York and Florida in the fall of each year and then in the spring back to New York, he puts in a claim for tires. His practice is to write to the Better Business Bureau and see if he can collect tire damages.

Q Do you have an example of one such situation with Mr. Riccobono?

A Yes, this goes back to the fall of 1967 when Mr. Riccobono started this practice and I have the bill of lading which was used to transport that vehicle. I don't know the necessity of putting this in.

Q Continue please.

A The bill of lading shows the driver to be a Ruth Edelman. Mr. Riccobono put in a claim for tire damages and we had to write to Mrs. Edelman the results of her delivery of the car in light of this and she wrote us back that the car had been delivered in good condition and there was no damage to the tires or the body of the car.

I would like a copy of her letter marked for identification. Here is the original.

Exam. Reilly: Marked for identification as Exhibit 214.

(Respondent's Exhibit No. 214,
Witness Zola, was marked for
identification.)

Q There is no date on this. Does the original have a date?

A No, it doesn't.

Q It refers to the transport of a 1966 car, can you tell from your shipping document when that car was transported so we can put this exhibit in, in point of time?

A Yes, the car was picked up on the 5th of October, 1967 and delivered on October 9, 1967. This letter was received subsequent thereto and it was received within the same year, that is, before the end of 1967.

As recently as this past fall, Mr. Riccóbono filed a complaint after having transported another vehicle with us, this is not his second, but one of many complaints, with the Business Bureau of New York City and we responded to that complaint and a copy of that response and the complaint form which is actually one quadruplicate of what they send out. This is the actual copy that we made for our records and here are copies of the copies. I think we ought to give the reporter the original because the copies don't reproduce very well.

Mr. Kiel: May I ask that this document be marked.

Exam. Reilly: Marked for identification as Exhibit 215.

(Respondent's Exhibit No. 215, Witness Zola, was marked for identification.)

A Because of the poor reproduction, I would just like to read out a short reply, the comments that we made:

"Mr. Riccobono has used our services before and has made similar complaints each time about tire replacement. We must decline his claim in the absence of any evidence of wrongdoing on the part of any drivers.

"In addition, Mr. Riccobono signed a satisfactory delivery bill of lading".

Q Would you say that Mr. Riccobono might be considered to be eccentric for your purposes?

A Yes.

Q Would you go on, please.

A Another complaint indicating the type of misrepresentative and fraudulent complaints that we have, concerns the transportation of the Comer vehicle. Again, as in the Michaels case, this type of situation involved the love lives of the shippers. Mr. Comer was the fiance of the owner of the vehicle he was transporting, at one time, and he had purchased the vehicle from her. She subsequently left him and broke her engagement and went with a Mr. David Hunt.

Now, the vehicle was still in the possession of the shipper -- of the lady when Mr. Comer demanded possession pursuant to the breaking off of the engagement and its purchase and she agreed to have it shipped to him.

The vehicle had very bald tires on it and when it came from Boston to New York, we felt that it was no longer safe for driving. The driver indicated that he didn't want to put his life in jeopardy and so we put it in a storage garage and tried to locate the owner shipper.

In the interim, we got a complaint from a Mr. David Hunt who represented that he was an attorney. Our investigation indicates that in fact he was not an attorney but that he worked for an attorney on the West Coast and he claimed that unless the vehicle was repaired at the expense of Aaacon and transported to him, that he was going to commence an action against us in California which we would have to defend with local counsel. It turns out that Mr. Hunt was the subsequent suitor of the lady who had the vehicle who was shipping it back to Mr. Comer and as a result of the difficulties, we had to engage California counsel. We informed Mr. Hunt, because he may have had an interest in the car at the time that we didn't know about, of the condition of the car which belonged -- which was being shipped by Miss Marie Marturana and I would like a copy of that letter marked for identification.

Exam.Reilly: Marked for identification as Exhibit 216.

(Respondent's Exhibit No. 216, Witness Zola, was marked for identification.)

A We had to incur storage expenses on this vehicle which was left with us for a period of two months while we attempted to straighten out the question of ownership and try and get someone to authorize repairs and a copy of that, of the billing on that car, is available as an exhibit, which I would like marked.

Mr. Kiel: May I ask that a copy be substituted for the original in the record.

Exam. Reilly: Yes, marked for identification as Exhibit 217.

(Respondent's Exhibit No. 217,
Witness Zola, was marked for
identification.)

A In order to resolve this matter, we had Mr. Comer -- Mr. Comer volunteered to come to New York. He himself had to engage California counsel and after investigation and the drafting of agreements by us with him, we turned over the vehicle to him. He had proven to our satisfaction that he was the person who was the rightful owner of the vehicle and additionally, the contents in the vehicle apparently belonged to some third person which was also being asserted as the property of Mr. Hunt and we had the third person, a Mr. John Miller sign a notarized affidavit indicating that he was the owner of the contents and that he would protect us from any difficulty in turning the contents over to Mr. Comer which we did, and copies of the agreements with Mr. Comer and the authorization from Mr. Miller to Mr. Comer, which was tendered to us, which came from Los Angeles as well, I would like marked for identification.

Mr. Kiel: May I ask first that the statement of Mr. Miller be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 218.

(Respondent's Exhibit No. 218, Witness Zola, was marked for identification.)

Mr. Kiel: I ask that the indemnity agreement of Mr. Comer be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 219.

(Respondent's Exhibit No. 219, Witness Zola, was marked for identification.)

A The total amount of time spent by our office in New York personnel, and Los Angeles counsel amounted to some 70 manhours for which we have received no reimbursement.

Q Will you go on to another situation, please?

A Yes. Another situation is indicated by the claim of Ella May McClatcher. Mrs. McClatcher transported a 1965 Pontiac of the type referred to in one of the news articles, which is an exhibit, from Cleveland to Los

Angeles.

Q When you say transported, you mean you transported it for her?

A Yes. The transmission on the automobile was defective, that is to say, in Madison, Indiana it was necessary for the transmission to be repaired. Mrs. McClatcher authorized the very minimum repairs possible on this vehicle in order to make it driveable. She was not a woman of great funds and unfortunately, the transmission again went out in Odessa, Texas. At this point, we contacted her and said, "Look, again the transmission has burned out."

At this time it was unknown to us and unknown to her that the accelerators on this vehicle were defective. We informed her again that the transmission had gone out in Odessa, Texas, we asked for permission to repair the car. She said no, it's your responsibility and she turned around and sued us on the automobile. She was unsuccessful on the suit, however, the car was eventually sold by the Aamco Transmission Agency in Odessa, Texas.

We pleaded with her in letter after letter to effect the repairs so we could transport the car, but it was to no avail. Instead of being -- well, I will just leave it at that and the letters from the two repair places to us indicating our investigation of the matter and the status of the matter are available and I would like them marked for identification.

Mr. Kiel: A letter of Crosby Auto Service, Madison, Indiana, I would like marked.

Exam. Reilly: Marked for identification as Exhibit 220.

(Respondent's Exhibit No. 220, Witness Zola, was marked for identification.)

Mr. Kiel: And may we have the next document marked for identification from the next transmission specialist.

Exam. Reilly: Marked for identification as Exhibit 221.

(Respondent's Exhibit No. 221, Witness Zola, was marked for identification.)

A In this case, the litigation we feel on the claim asserted constituted a civil form of extortion, that is to say, Mrs. McClatcher knew from our correspondence and the facts available to her that there was nothing wrong with the vehicle except the transmission.

Due to the fact that she was in Los Angeles with local counsel, she sought to apply pressure on us by means of litigation and she sued us for the entire value of the vehicle, not for the cost of repairs.

Another situation, if I can get off some of these rather than just be repetitious, that arises, concerns correspondence with our company and our obligation to answer the claims of individuals and the complaints of individuals and the Commission's position in this and typical of this situation in which a letter writing campaign by an individual can often be attempted to be used to settle a claim, is the situation of Dr. A.O.E. Animalu.

Q I see that you have a whole sheaf of documents. Instead of putting them in as exhibits, will you briefly describe the number of them and the sequence?

A Briefly, Dr. Animalu wrote to us --

Q Could you summarize and tell us how many letters there are and over what period of time did you correspond with this gentleman?

A We corresponded with him -- I don't think I have all of them here. We corresponded with him over approximately three and a half months and the situation that arose was that his car had suffered some mechanical difficulties, it was a Ford vehicle brought to the Ford dealer in Lebanon, Missouri. We informed Dr. Animalu of this and his letters accused us and these are quotes from the letters, of foul play, that we were a "close knit gang of brokers" that is us and the car repair. That letter was actually written to the Interstate Commerce Commission after extensive correspondence with us. The car was seven years old. First he accused us of losing it although we informed him where it was. He characterized our employees as treacherous. We forwarded to him the contents of the vehicle and we informed him finally on March 1, 1968 that "Our company stands ready to complete delivery of your car if and when you choose to repair it. We have made no deals or agreements to get any money"out of you" as you püt it, nor shall we profit in any way from this repair."

He again wrote to us on March 6 in response to the letter and called us a gang of brokers. I don't know, he kept putting that in quotes, so I guess it meant something to him. He characterized that letter as sadistic and we suggested to him that alternatively on the phone that he could go to Lebanon and inspect the vehicle and he said that it wasn't safe to walk the streets of Missouri and he wouldn't go there.

We also have copies of letters that he wrote to Johnson Ford and that Johnson Ford wrote back to him. He wrote to the Commission and finally the Commission wrote to us and asked us to look into the matter. We again wrote to Dr. Animalu with a copy to the Commission on March 27 and we suggested to him that a reasonable course of action would be one to verify the reliability of Johnson Ford with the Ford Motor Company and then I suggested to him that if the facts indicated that Johnson Ford was reliable, he could forward them the money necessary for the repairs and we stated again at the end of our letter "Notify us when the car is mechanically fit and we will be happy to dispatch a second driver to transport your vehicle to you." This was never done by the doctor. We were unable in this matter to in any way persuade him of what we understood the facts of the case to be or our good faith attempt to assist him in the repair of the vehicle.

Q In the meantime, will you agree with me that the Commission has a pretty big file on this matter, too?

A They must have because I sent them copies of everything we had on this matter.

Q Will you give us another example of this type of situation?

A Yes. Another example of that type of situation wherein we feel an individual uses a letter writing campaign or even uses government agencies is the claim of James Kirk.

I have in this particular case not sought to reproduce what is over 100 pages of correspondence with Mr. Kirk, and the Interstate Commerce Commission. Mr. Kirk's claim involved damage to his vehicle which was in the amount, from our adjusters and investigation of

$20. This was received on November 27 -- excuse me, no, that was the very end of it. At any rate, what happened with this was that Mr. Kirk wrote letters to the Interstate Commerce Commission, to the Los Angeles Times, to every Better Business Bureau in every major city that he could think of and to us and telephone us and kept telephoning our employees at their home addresses.

Q What did Mr. Kirk want?

A It wasn't quite clear at the beginning. We felt that Mr. Kirk just thought that our offer of the adjustment of the claim wasn't satisfactory. The claim itself was for hail damage to his car. There were little hail marks all over. There was a question of whether or not a car receiving hail damages is the responsibility of the carrier under the act of God doctrine, but the damage could have been refinished very inexpensively. I don't mean this as any criticism whatsoever, we received telephone calls on this from Commission employees and they asked us what the status of the matter was and then as the months went by and the correspondence continued, they asked us if we would reconsider the claim. We finally did reconsider the claim and in order to end what had become a voluminous situation, really out of control, we made an offer to Mr. Kirk of approximately $200, which Mr. Kirk accepted, cashed the check and then continued his letter writing campaign.

Q It didn't help?

A It didn't help and I finally wrote -- Mr. Kirk finally wrote me almost two years later that he now wanted us to repair the steering box on the vehicle.

Q Was that the first time that he had mentioned that?

A Yes, and at that time I just took his letter and I sent it to the individual at the Commission who had expressed an interest in this matter and who had asked our cooperation and I wrote at the bottom, "Believe it or not, our friend returns. This is right out of Alice In Wonderland."

Other of his tactics included sending us photographs of his car with signs on it denouncing AAacon and he was driving his car around Los Angeles with these signs on it.

He sent us Christmas cards with nasty sayings on it to which he affixed his signature. I would like to read a paragraph of this letter which is available to anyone for inspection. This is the second paragraph after he says he wants the steering box repaired:

"I am rapidly getting into the mood for another major round of unpleasantness over your dealings. You might find it to your advantage to send me a check for the $48.48 that I have spent for the steering box."

Q You made that known to a member of the Commission, an employee of the Commission?

A Yes, I mailed it to an employee of the Commission.

Q Apparently this was a good size file that a person at the Commission had a --

A We had so much correspondence on this, as I indicated, it was well over a hundred pages. This was a matter on which we exchanged many pleasantries, the employee of the Commission and myself, that is.

Another case, and this is again typical of a type of case we received, is where individuals again would like to sell their vehicles to us. Mr. Seymour Stern of Hollywood, California had an old Ford which he shipped with us, a '63 Ford --

Q Shipped when?

A 1969. And it broke down about 30 miles -- well, it broke down in California. It was going from California to New York. It didn't get out of the State. We took it -- the car was undriveable and it was towed into a local service station. Mr. Stern called us and said he wanted it towed to a Ford service station for repairs. We gave him the name of the place where it was and we said they would tow it anywhere he wanted if he wanted to pay for it.

Instead of that, he wrote to the Interstate Commerce

Commission and he accused us among other things, of stealing the car. The correspondence with him went on for quite a bit and when he finally came to New York, he was never available, when he finally came to New York we were able to explain the situation to him and he discharged us of any liability and we ended up quite cordially.

Q And again would you say that there is a file somewhere in the Commission's records about your company being accused of stealing this man's car?

A Yes, and we wrote to him when he finally came to New York, at the Chelsea Hotel, I wrote to him on December 9 stating to him at length what had happened. I don't know if that letter ever reached him. I would like to finish this continuation of typical cases with one which appears on the Commission's Appendix A.

Q Which is Exhibit 2.

A Which is Exhibit 2, I believe, in this proceeding. This involves the alleged claim of Mrs. Lee Martel.

Q Now, with respect to that person, do you recall a witness from the Commission indicating that he had attempted to serve a subpoena on that lady?

A Yes, sir.

Q And because of ill health she would not be available?

A Yes, sir. With regard to that testimony, I believe that that is what she informed the man who testified.

However, I do not believe that that is the truth of the matter at all.

Mr. Browning: Mr. Examiner --

Q Just explain the basis of facts of that situation.

A Mrs. Martel transported her automobile through us from New York to Florida and during that time an oil leak developed in the car. The car was taken to a Cadillac dealer in Manhattan by --

Q Was it a Cadillac?

A Yes, it was taken to a Cadillac dealer in Manhattan by the Aaacon driver. Mrs. Martel wasn't satisfied with any Cadillac dealer aside from her own, making the repairs and she asked that the car be towed at her expense to her Cadillac dealer, from the west side Cadillac dealer to the east side Cadillac dealer. We sent another driver, who was a married lady. She picked up the vehicle and transported it to Mrs. Martel.

The car came in without the splash plate, which was a $20 item, that is the plate that covers the tire on Cadillacs, so that the back fender has a smooth look, it's a very noticeable item if missing.

When the car was delivered to Mrs. Martel, she and her husband whom she claims has a heart condition and I have no reason to think otherwise, they went down, noted the splash plate that it was missing, on our bill of lading and sent it to us. No claim was received by us initially, but since we did have this notation indicating some discrepancy and dissatisfaction in delivery, we corresponded with her and we told her that inasmuch as she had chosen the place of repair, we didn't feel that it was our responsibility, that we were responsible for the splash plate. This question had gone up and back for quite awhile. She then accused the driver of not being the real person whom we had signed out because the driver's last name was Bonno, but her name on the driver's license was Donohue. That is because the driver's license was issued to her when she was single and Mrs. Martel made a big deal about this.

Q May we go back to the splash plate for a minute? Did you have information which resulted in your allegation that you didn't receive the car with the splash plate from the first repair situation, is that what your contention was?

A The car had the splash plate when it was picked up from Mrs. Martel; had developed an oil leak and brought to a garage. From there it was brought by Mrs. Martel's towing company to another garage and picked up by us again. We asked her to ask the garage if they had her splash plate. She never indicated that she had taken that action. The correspondence between us continued

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and the claim expanded in size.

Finally, after awhile, a claim was made for physical damage to the car, that is to say, damage to the car from bodily harm which we felt was unusual in light of the fact that the car was inspected and it wasn't noted at any time in the beginning.

Q How long after the delivery was this claim for damage to the body of the car made?

A It must have been about two months or so. It was quite awhile. We thought nothing more of this matter; we thought we had come to an impass until we had noted Mrs. Matel's name, although we had been corresponding from time to time, we noted her name on the list of shippers from the Commission and at that time we felt that further investigatory work was necessary. We wrote to Mrs. Martel on November 5, the type of letter that has been previously alluded to in the testimony of others asking her if there was any question in her mind because we couldn't figure out why the shipment in question was contained in the exhibit. That was the letter of November 5. We wrote to her the same letter on December 7 and again we received no response. We wrote to her the same letter on January 10 and received no response.

Finally, we sent out a copy, certified mail on February 18 requesting a response. The reason for all of these letters was that we had asked her after -- I have to make a correction, I may have misled you. She did respond to our letter of November 5, but we asked additional questions because it was very unusual.

Q You mean the response you considered to be unusual?

A Yes, the last page of which stated "Be thanking your lucky star that we are not greedy, $1,000 will cover. Though part of this will allow our automobile to be put back in shape, it can never erase the harm done to my husband and myself."

What was unusual about that letter is that in the interim we had corresponded with Mrs. Martel's insurance company and they indicated to us that payment had been made to her over two years ago and in light of that unusual --

Q For what?

Mr. Browning: Mr. Examiner, I have to interpose an objection here. I think we are getting into the realm of hearsay, we don't even have any hearsay documents here --

A I was about to. A copy of the proof of loss was sent to us by her insurance carrier and this is the one that was sent to us and here are copies.

Mr. Kiel: May I have that marked for identification.

Exam. Reilly: Marked for identification as Exhibit

222.

(Respondent's Exhibit No. 222, Witness Zola, was marked for identification.)

A It seemed to us unusual that the insurance company had not pressed their claim in a more vigorous manner with us and we asked them at that time had they made any photographs of the damage to the vehicle and they sent us the original photographs, all of which are stamped December, 1969, which we have made photocopies of.

Q Do you have color photographs?

A Yes, these are the originals made by the insurance company and sent to us of the condition of her vehicle prior to its repair, that is the alleged damage condition of the vehicle and the areas of damage.

Q You have Xeroxed these photographs?

A Yes, I have and I would like the originals put in the record because the Xeroxes are not adequate.

Q May we affix those to a sheet of paper?

A Yes.

Mr. Kiel: I ask that a sheet with the five color photographs attached be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 223.

(Respondent's Exhibit No. 223, Witness Zola, was marked for identification.)

Mr. Kiel: Gentlemen, the original in the docket has the exact pictures, the reproductions are not as clar as the originals. They are available for examination.

Q Would you refer to the pictures, Exhibit 223 and indicate what they show, in your opinion?

A In my opinion, and I have taken these to a professional adjustor, these are what are called protection photographs. It shows that there is no damage to the areas claimed except that the splash plate is missing, which is the bottom photograph.

Mr. Browning: Which one?

A You will see one picture of a tire area, maybe on your copy it's not the bottom photograph.

Mr. Kiel: The top picture.

A Other than that, the photographs, according to the adjustor and according to my best educated view, show no damage and in this regard, I would like to indicate the nature of the photographs taken.

One of the photographs shows the assembly of the left rear taillight which would normally be an area of damage on a Cadillac of that year because it extends off the car.

Another photograph -- and there is no damage visible from this.

Another photograph shows the line of the fender on the left rear side and if any work were necessary, that line would be other than straight which it is not.

Another of these photographs shows the bumper assembly on the rear of the car, which is also straight and not in need of repair.

Another shows the left front headlamp area which is another extension area on a Cadillac susceptible of damage and it shows that there is no visible damage.

Q And you say these pictures were supplied to you by Mrs. Martel's insurance company to show the condition of the car for which they made the payment on Exhibit 222?

A Yes, and I believe their reluctance in sending them to me in pressing the claim, that Mr. Martinez felt that the claim should not have been paid at all.

Q Who is he?

A The adjustor for the insurance company.

Q There was no claim pressed against you by the insurance company --

A There was an initial notice that they had a subrogation interest. In light of these photographs and the payment to her which was never mentioned by her in any of her letters and which was omitted in her response of November 27, I want to make clear the correspondence.

I'm sorry. I may have garbled an area here before.

After her letter of November 27 and getting in the documents of her insurance company, we wrote to her on December 7. I haven't reproduced it, but the relevant portions I will read very quickly. I said "However, I note from your letter two other items which I feel deserve clarification; one is the question of the missing tire guard, and the other, the damage claimed after the car had been delivered.

"As to the tire guard, we feel this was a loss incurred while the vehicle was being repaired prior to its actually being transported by us to Florida. However, perhaps the driver should have checked before taking the car and in this regard, we are willing to reimburse you for this expense.

"I would like to know about the other damage to the car and whether or not it was noted when the car was received by you. Also, any information as to when it arose.

"Finally, as to these additional damages, we have received a claim from Crawford & Company for damages and I am wondering if you have been reimbursed by the American Home Assurance Company."

That was on November 27. There was no response to that letter despite the fact that she had written to us on five different occasions.

We wrote to her on January 10 enclosing a copy of our December 7 letter, we sent certified mail and here is the certified mail receipt signed by Mrs. Lee Martel dated January 12, 1972 and her address and I don't have it reproduced, but it's available for inspection.

Again, there was absolute silence from her.

Then occurred the hearing in Florida at which she was not available and it was my opinion that the reason she wasn't available is because she didn't want to go into these questions that I raised. That is just my opinion.

On February 18, in order to seek a conclusion of this matter prior to my testimony here, we again wrote to her and we have to date received not one word from Mrs. Martel, this is in spite of the fact that we have made an offer in payment which according to her claim, she should be happy to receive.

Q Mr. Zola, are the instances you have described typical of some of the problems that you have in connection with complaints and claims filed against your company?

A Yes, the don't represent, fortunately for us, every claim or even the vast majority of them, but they do represent a surprisingly large number of claims and this is part of them.

Q Do you also have situations where the claims are filed for more than what you think you're properly responsible?

A Yes.

Q Briefly, what I would like to do is go to Exhibit 2 and tell us the status of the complaints or claims with respect to those persons who are listed on Exhibit 2 and --

Exam. Reilly: I think before we get into that, perhaps we ought to break for lunch.

We will recess until 2:00 o'clock.

(Whereupon, at 12:40 p.m. the examination adjourned for luncheon.)

* * *

AFTERNOON SESSION

2:00 p.m.

Exam. Reilly: Back on the record.

Q (By Mr. Kiel) Some testimony was given by witnesses with respect to an allowance of $10 by your company made in the past in an effort to allay certain concerns of customers, do you remember that testimony?

A Yes, sir.

Q What is the status of that situation now?

A The status now is that as a result from Mr. Tomany a few years ago suggesting that under certain circumstances that might constitute a rebate, we just voluntarily discontinued it at that time and have not used it since.

The purpose of it initially was to make some minor adjustment of what appeared to be very negligible or doubtful claims.

Q Now, with respect to the documentation that you have in your various claim files, is anything more used or needed by you in making the determination with respect to a payment of a claim other than the cold papers in your file?

A Yes, sir.

Q Will you explain what that is?

A One of the most intangible items with regard to claims is an assessment of the setting in which the claim is presented. I can't emphasize too strongly and I think the Commission in its wisdom and in its report indicated that it wasn't going to get into the actual settlement of claims. I can't emphasize too strongly the necessity for the assessment of the overall situation, the circumstances, the kind of person who is asserting the claim, a sense of experience with regard to these claims and the nature of a particular claim. A feeling that one gets after years of settling claims and being in a claims enviornment with regard to what claims are justified and which are outrageous. It's a human element that is really not permissible of being put on paper.

Q Do you have any practice of disallowing claims that you feel are legitimate claims?

A No, sir.

Q Do you ever do that?

A No, sir, not to our knowledge or effort.

Q Have you examined Exhibit 2 in evidence in this proceeding which is the list of names and your bill numbers and dates and automobile information that was originally supplied by the Bureau of Enforcement after the institution of this proceeding?

A Yes, sir.

Q And have all of the people whose names are on this exhibit appeard as witnesses?

A No, sir.

Q Nevertheless, have you attempted to determine the status of each of the questioned shipments?

A Yes, sir.

Q Would you tell us what your determination developed?

A Well, as to the claim of Mr. -- strike that.

As to the listing of the name of Mr. Carick, we never received any claim whatsoever, oral or written from such a party or relating to such a shipment. The same is true as to the listing of the shipment under the name Morales and also under the name Mandel.

Q Can you give us the numbered sequence where these may be found on Exhibit 2, Carick is which one?

A Mr. Kiel, I don't have a copy of it. If you will give me a copy, perhaps I can flip through it quickly and pick them out.

Mr. Carick is indicated as Mrs. James Carick, Pennington, New Jersey.

Q What date?

A 10/24/69.

Q What page?

A Page 4.

Q Now, Morales is next.

A Well, I have Mandel here, that is also on page 4, the date is 7/10/70. Morales is on page 5, the date is

3/9/70. I can go on if you would like.

Q Would you please?

A Yes, in addition, the claim of Sisenwein was settled --

Q What page is it on?

A Page 6, date 1/30/71.

Q That claim was paid?

A Yes. The claim of Mr. DeBunt was settled in full -- strike that -- was paid in full.

Mr. Browning: Who?

A DeBunt. That might have been on a subsequent list. I know there was a supplementary list.

Q Continue, please.

A Mr. Nowell wrote to us and indicated that he was satisfied and said he had no complaint about the handling of his claim and I have the original of his letter and I have copies of it.

Q Where is that on Exhibit 2?

A Mr. Nowell is on page 1, the date is January 12, 1970.

Mr. Browning: That was settled in full?

A According to his letter.

Mr. Kiel: I have a letter here and I would ask that I be permitted to substitute a copy.

Exam. Reilly: Yes.

Mr. Kiel: I ask it be marked.

Exam. Reilly: Marked for identification as Exhibit 224.

(Respondent's Exhibit No. 224, Witness Zola, was marked for identification.)

A I want to make clear that when I use the phrase "settled in full", I don't mean that the entire original complaint or claim as submitted was paid in the full amount, but that a mutually agreeable amount was arrived at and paid.

In addition, Mr. Don G. Shane on page 4, 7/20/69, sent us a response and stated that he had no claim outstanding against our company nor had he been contacted by anyone nor had he any further interest in asserting a claim with our company and he wrote us that letter.

Mr. Kiel: May I ask that a copy of that letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 225.

(Respondent's Exhibit No. 225, Witness Zola, was marked for identification.)

Q Would you go back to the situation with respect to Mr. Nowell. Do you know whether he has used your company subsequent to the situation where there was a minor damage to his car?

A Yes, he has.

Q Would you go on, please?

A In addition, we had sent out letters which have previously been identified, that letter of inquiry of November 5, to everybody on this list.

Q That is Exhibit 2.

A Exhibit 2. And the subsequent list too, there was another one, I know, a smaller one and in the vast majority of cases they didn't even respond, indicated that they possibly had no further questions or complaints.

Mr. Browning: I object to that. They didn't respond, now that is as far as it should go, Mr. Examiner.

Exam. Reilly: Well, it's in the record and I don't think there is any harm in it.

Mr. Browning: I move it be stricken.

Exam. Reilly: We will let it stand in the record.

A The Nowell claim was paid by us and settled, that case was settled in the full amount as requested by the owner.

No, I don't believe the Nowell claim, although it was settled was raised by the Commission in its list. I don't see it at any rate.

And finally, Mr. Kiel, the two other comments I wish to make about this list is that many of the shippers listed on here never, to my knowledge, or was I informed as I normally would be by the Commission, never corresponded by the Commission, but rather their names were taken from the files of our company upon the several investigations examining over 3,000 documents by Mr. Campbell of the Bureau.

The final shipment I want to refer to on this list is the Sanders shipment. Mr. Sanders was in the hearing room here in New York on the first phase of this hearing.

Q How do you know?

A He came over to me and introduced himself once he found out who I was, when he found out that I was one of the Zolas, and he indicated to me that he was satisfied, that he had no complaint and he so informed Mr. Browning and Mr. Browning excused him from testifying and he subsequently, since that time shipped his car with us to Florida.

Q Now, is there a Cantor on Exhibit 2?

A Yes, Exhibit 2, yes, there is; page 3.

Exam. Reilly: You haven't got a question pending, he said "yes, on page 3."

Q What is the status of that matter?

A According to the information we received from Mrs. Cantor, there is no claim outstanding at this time.

Q Is there a Flaxman on this list?

A Yes, there is a Flaxman on this list.

Q Will you explain that situation?

A   Since Mr. Flaxman's name was put on this list, and Mr. Flaxman to my knowledge never complained to the Commission, this was one of the complaints that was taken by the Commission from our files upon investigation. We wrote to him, he had given us a clean bill and at the time on November 5, we wrote to him and he got in contact with us and apparently due to an error on our part, the wrong bill of lading was in his file.

Mr. Flaxman had sent his car with us on so many occasions that the bill of lading which was the basis of our investigation was the wrong one. We sent him the right bill -- we found the right bill, sent our apologies and settled the claim.

Mr. Browning: Where is Flaxman?

Mr. Kiel: Page 1.

A   1/5/70.

Q   Now, will another witness discuss the question of the dealer deliveries?

A   Yes, sir.

Q   But do you have any personal knowledge resulting from conversations with any representative of the Interstate Commerce Commission in California about that situation?

A   Yes, I do.

Q   Would you tell us what you know as a result of the conversations and with whom you spoke and about when it was?

A I spoke with Mr. Strakosh last year.

Q Will you tell us what your conversation was with Mr. Strakosh?

A I met Mr. Strakosh at the offices maintained by Ernest Horton. I was out in California at a routine review of some of the offices of our company and I went in the course of our review, I went randomly to Mr. Horton's office. We had at that time three offices in the Los Angeles area. By shear coincidence, Mr. Strakosh decided to make an investigation of Mr. Horton's office as it regarded dealer delivery shipments and he walked into Mr. Horton's office about ten minutes after I did and he asked Mr. Horton at that time for certain files and Mr. Horton indicated a slight reluctance and I indicated to him to make available everything that he had to Mr. Strakosh and Mr. Strakosh and I reviewed the fileds of Mr. Horton and specifically got into questions about the deliveries of various cars that had been repossessed and certain specific instances. I would say we covered about 20 in number after about which time Mr. Strakosh and I left Mr. Horton's office and some distance away had a conversation for about an hour concerning this situation and this was, I believe -- I can give you the exact date, I believe it was January of 1971, January a year ago and at that time, it may have been actually December of '70, it was right around that time.

At that time, I asked Mr. Strakosh if he had found any illegalities on the part of Horton and his shipments and he indicated that he had not.

I stated to him that if he found any, we were not enchanted with Mr. Horton as an individual and if there was any indication of illegality which would constitute a basis for us to find that his actions were not in accordance with our agency agreements with him, if he forwarded that evidence to us, we would be happy to remove Mr. Horton as an agent and we had quite a cordial conversation and we discussed the question of repossessed automobiles and we further discussed the facilities that Mr. Horton had and at one time Mr. Horton indicated that certain cars were stored that belonged to certain finance companies that were repossessing them and others were being processed for these finance companies such as cleaning, inspection and various other repairs that are done to vehicles which are being repossessed.

Q With respect to breakdowns in transit, do you have any standard procedures for handling that type of situation?

A Yes, we do.

Q And would you explain briefly what that is?

A Yes, in the event that a vehicle breaks down, that is to say, encounters a mechanical difficulty which is not due to driver fault, if it's due to driver fault, we repair it and send it on its way. But where it's not according to our investigation due to driver fault, we have the owner notified, we take it into the nearest repair facility and if it's not driveable in any way, it can be towed to any place the owner selects. The car is then repaired at owner's expense pursuant to our tariff rules and we dispatch either the same driver if the repair is a small one, or if the repair is a long one, we would dismiss that driver with respect to the delivery of the vehicle, and we would assign a new driver once the vehicle is repaired and ready for the road.

Q With respect to repairs, were you deem the occurrence to result from an Act of God or an inherent defect, will you tell us whether or not you pay those claims?

A We do not.

Q Will you tell me why?

A Because those are exceptions to carrier liability and it would be unlawful for us to make voluntary payment of those claims.

Q Has the Commission dealt with that in their decision at 340 ICC and indicated that carriers are not liable for those situations --

A Yes, sir.

Q Was that your prior understanding of the law?

A Yes, sir, we had done an intensive research into that question. I must say that because of the nature of what we do, that is to say that we operate the cargo, this is a question that concerns us and I believe every other driveaway carrier and it's a very important question to us and as a result, we have spent a great deal of time and effort researching and investigating the matter.

Q Now, with respect to the use of arbitration by your company, are you familiar with the provisions --

Mr. Kiel: Let me withdraw that for a minute.

Q Mr. Zola, has your company been sued by a shipper for your failure to pay a claim which you deemed to result from the inherent mechanical defect of a vehicle that you were transporting?

A Yes, sir.

Q And I show you a true copy of a judgment in the United States District Court for the Southern District of New York and ask you if you are familiar with that?

A Yes, sir.

Mr. Kiel: I ask that a copy of that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 226.

(Respondent's Exhibit No. 226,
Witness Zola, was marked for
identification.)

Q To correct my description, was your company the plaintiff in this matter?

A Yes.

Q And will you explain how you would be the plaintiff in this matter?

A Yes, we had received a claim by the Central Mutual Insurance Company on behalf of their insured, Robert E. Meade, concerning a vehicle that had encountered physical damage to the body as a result of an accident which our investigation indicated to be caused by defective steering linkage. There has been, as a result of the commencement of these proceedings, and certain allegations that have arisen although they are not spelled out, a question in our mind as to whether or not inherent mechanical defects in vehicles giving rise to collision damage constituted an exception to carrier liability under 49 US Code 20 (11) It had been our conclusion as a result of extensive research prior to this time and including as I mentioned before, the Hoofer Motor case and our conversation with persons at the Commission, that we were correct in believing that this was within the carrier liability exception.

However, in order to get a final determination of this issue once and for all, we brought a declaratory judgment in the Federal Court for the Southern District of New York with the Central Mutual Insurance Company with regard to this claim, they are located in New York and posed to the court the question as follows:

If a driveaway motor carrier's investigation reasonably leads it to believe that an accident or damage to the cargo is caused or is the direct result of an inherent mechanical defect, would that be within the exception of carrier liability as I have previously spelled out and the court, pursuant to Judge Bowman indicated that such would be an exception and that perhaps anticipating the language of the Commission indicated that a motor carrier such as AAAcon could not voluntarily make payment on such a claim and this was a contested motion.

Q Now, sir, the judge in that instance ordered you to resist in all lawful means the payment of that claim --

Mr. Browning: Mr. Examiner, I believe the document speaks for itself rather than interpret it.

Mr. Kiel: I wasn't going to ask him to interpret that.

Q Do you, in claims of the type such as the one as depicted in Exhibit 226, resist payment by all lawful means as a legal obligation of your company?

A Yes, in the absence of carrier fault, we do.

Q Are you familiar with the provisions in the bills of lading which is marked for identification as Exhibit 162 --

Mr. Browning: The bill of lading?

Mr. Kiel: Yes.

Mr. Browning: 162, isn't it?

Q Did you assist in the preparation of the provisions on Exhibit 162 as they relate to arbitration?

A Yes, sir.

Q And when did your company start using those or similar provisions?

A About three years ago, two and a half years ago, something like that.

Q Are you familiar with Section 2011 of the Interstate Commerce Act commonly known as the Carmack amendment?

A Yes, sir.

Q To your knowledge has the Commission ever prescribed or proscribed the use of the arbitration provision or provisisions which you have in your bill of lading?

A They have never probated them nor have they authorized them although the recent report indicates the words they encourage such provisions.

Q Have you familiarized yourself with the Harter Act also known as the Carriage By Sea Act?

A I have.

Q With respect to Section 2011 and the Harter Amendment, what similarity or dissimilarity is there --

Mr. Browning: I would like to get a ruling at this point. I don't know what the Harter Act relates to here.

Exam. Reilly: I don't know either.

Mr. Kiel: The Interstate Commerce Commission has jurisdiction of water carriers under part 3 of the Act. However, under the carriage of goods by sea act, the question of liability of the water carriers is governed by that Act rather than by Section 2011 and that is the reason that this is important because, Mr. Examiner, there are similarities between 2011 and this Act which will lead then and relate to the arbitration question.

Mr. Browning: Isn't that a legal argument? Is he saying that the Harter Act is part 3 of the Interstate Commerce Act?

Mr. Kiel: I am saying that carriers who are regulated by the Interstate Commerce Act under part 3 are governed under their liability to the public in claim questions by the Harter Act and the Commission has referred to it in great length in its decision at 340 ICC.

Exam. Reilly: To the Harter Act?

A Yes, sir.

Mr. Browning: If that is true --

Exam. Reilly: It seems to me -- I don't know what is to be accomplished. If you want to handle this, why not do it on brief or on memorandum of law. I am sitting here and listening to things which I don't think have any real relevance to an oral hearing.

Mr. Kiel: Mr. Examiner, the reason for this is that we have to establish a reasonable and just course of conduct and unless we can develop how we arrived at the practices we follow, we are not going to be in a position to develop our evidence and in this instance, it was necessary to have some familiarity with what we thought we could do before we decided and determined to do it and that is the purpose of the evidence and that is the only intention at this point, to develop evidence.

Now, it happens that in order for us to establish a provision, we have depended on the laws of the United States for guidance and unless we can show that we have, then we will not be able to put in our proof and the Commission is investigating the justness and reasonableness of our practices.

Mr. Browning: Mr. Examiner, we are governed here by the Interstate Commerce Act, that is the relevant statute involved.

Mr. Johnson: And the cases construing that Act as of the time that these deficiencies are alleged by the Bureau of Enforcement, Mr. Examiner. I would like to join in as far as this legal argument is concerned. I think Mr. Zola's opinion is as good as anyone elses but it's still just opinion and I think it's a proper matter for briefs.

Mr. Browning: Not only that, but I think he is working backwards. He is saying this is a justification for our acts. He is taking something out of the most recent decisions of the ICC, 340 ICC which I haven't even gotten around to reading yet.

Mr. Kiel: I am sorry if you haven't read it yet.

Mr. Browning: This is not the foundation for the arbitration provision which has been in their bills of lading since 1961 or '62 since they started.

Mr. Zola: Mr. Examiner, may I be heard?

Exam. Reilly: You might as well.

Mr. Zola: It seems to me that this is a simple structural problem in the presentation of this evidence. The question here is two fold. Number 1, has what we have been doing followed a just and reasonable course of action? In other words, have we had a reasonable basis for what we have been doing?

Secondly, the use of events and decisions which have occurred subsequent to the adoption of us by the practice simply indicate that what we thought was a reasonable course of justice has in fact, be so found by the Commission to be a reasonable course of justice. Without us being able to introduce evidence as to the reason and the basis for which we originally began to do these acts, the Commission gets no indication in the record of whether or not we had a reasonable basis for what we did and in view of the way the order is framed in terms of unjust and unreasonable courses of conduct, it seems to me that this evidence is absolutely vital because it shows why we did what we did. Even if we had been wrong and apparently we are right.

Mr. Browning: Mr. Examiner, I take exception to that. We are talking about arbitration in New York City versus arbitration in general --

Mr. Zola: That's for the Hearing Examiner to decide. The point is, unless we can show the basis for the origin of our practice, we have not responded to the charges and we are attempting to respond to the charges.

Exam. Reilly: I don't agree with you at all. I mean, you stated what your policies have been going back for many years, what the variations of the policies have been with respect to new development and discussion with Commission employees as a result of cases decided by the Commission. I don't want to get into ever act that might relate to some action by a carrier in establishing policies as to anything and everything. I am not going to let that development go through.

You have had ample opportunity to develop all matters relating to the establishment of your policy and now you are trying to bring in some water carrier act. There must come an end to this kind of thing and I think we have arrived at that point.

Q Upon what basis, sir, did you arrive at a determination that you properly could and would use the arbitration provisions shown on Exhibit 162?

A The basis upon which we came to that conclusion was research and court decisions which over a period of years had given us guidance, that is to say, court decisions as opposed to research; court decisions involving our company which have given us guidance as to the propriety of arbitration, the local of arbitration and the form which that arbitration should take.

Q Now, in Exhibit 162, toward the end of the statement of terms, there is, the sixth line from the bottom begins with "Any claim or controversy"; do you see that?

A Yes, sir.

Q And it ends with "shall be settled by arbitration in New York City."

A Yes, sir.

Q Now, the next sentence indicates at the end of the sentence that the arbitrator's jurisdiction shall be limited by the evidence in the state that the arbitration is held. Now, would you explain these two provisions?

A Yes, sir. Working backwards if I may, the provision with regard to the rules of evidence, our research indicated that not only a shipper under 2011, but a carrier as well, is not permitted to waive any of the rights it may have with regard to the just settlement of claims and in order to assure that all the procedures safeguards attendant to a litigation would be available to the parties, we have incorporated in our arbitration provision a requirement that either party, that is a provision that either party may request and enforce the proper rules of evidence, discovery and all pretrial procedures which would otherwise protect that litigation.

With regard to the question of arbitration, going back to the prior provision which you discussed, any claim or controversy has been the standard form used by persons seeking arbitration to make sure that there is uniformity applied across the board to all shipper's claims. In other words, it says -- any claim or controversy whether founded in contract or tort, this previously under Federal law and in the decisions thereunder was held to encompass any possible claim that could arise against a carrier over which the Federal courts would have jurisdiction as indicated in the Supreme Court in the Payton case.

The indication of the place of arbitration is for two fold purposes: One, it creates a uniformity with regard to all arbitration so the claims of all shippers and all shippers are treated in a uniform manner which has been suggested by the Commission subsequently in its report to be a favorable way of handling shipping claims, that is to say, that they be handled uniformly.

It also provides a reference to rules. New York is the largest commercial state in the United States and the number of arbitrators available in New York City is the greatest number of anywhere in the United States.

Q Did the Commission at its decision at 340 indicate that the location of sufficient arbitrators might be a general problem in using arbitration to settle claims?

A Yes, sir.

Q And what is your opinion with respect to the availability of arbitrators for the settlement of the type of claims that you have in New York City?

Exam. Reilly: He just stated that, Mr. Kiel. He said the greates pool of arbitrators in the United States was in New York City.

Q Now, is it necessary in arbitrating a claim for loss or damage to cargo for witnesses to appear in New York City?

A Neither witnesses nor claimants need appear.

Q In the Commission's decision at 340 ICC, did they discuss that factor?

A Yes, they said that approximately 90 per cent of all claims in arbitration could be handled on documentary evidence.

Q In your opinion, was that the basis why the Commission indicated that they were going to ask Congress for an arbitration statute which would permit them to arbitrate these claims?

A That is what they so stated.

Q Would you have any opinion on whether or not you would be in favor of a body within the Commission to do this?

A Definitely, we would certainly be in favor of it.

Q Is legal counsel necessary in handling these arbitration of claims for loss and damage?

A No, sir.

Q Have you had experience in cases where persons arbitrated without legal counsel?

A Yes, sir.

Q And in certain of those situations, were the claimants successful?

A Yes, sir.

Q Have you had experience in arbitrating under your arbitration provisions?

A Yes, sir.

Q And would you explain how it works?

A It works in the following manner. The parties, once they have reached an impass can arbitrate in one of two ways; they can select a single arbitrator which we normally suggest would be the American Arbitration Association although for reasons I will get into, we do not suggest that the parties use the rules of the American Arbitration Association, rather that they just tender us an arbitrator. Or else the parties can each select an arbitrator and then select a third arbitrator.

Q If your claimant is in California and he wants to select an arbitrator out there, can he do so?

A Yes,

Q How does it work in that situation?

A The arbitrators, all the documentation -- each side presents its documentation and makes the statements that it wishes to make to each arbitrator and the arbitrators are then in a position to, if you will, cast a vote. They can correspond with each other. Their internal decision, how they come about it is not normally exposed to the parties, but they can either telephone each other or correspond or take a vote and a majority of the arbitrators decision would be binding both under the laws of New York State and under the Federal Arbitration

Act. Actually, this is governed by the Federal Arbitration Act since it's an interstate shipment.

Q Is there a United States statute called the Federal Arbitration Act?

A Yes, 9 US Code Section 1.

Q Now, with respect to the use of arbitration, is there an expense or cost that is paid to start the arbitration?

A The answer to that would only be in most cases no, unless an arbitrator is appointed by the American Arbitration Association at which time the cost is $50.

Q Who eventually bears that cost?

A The arbitrators can determine who is to bear it. Normally the party losing, that is the party whose assertions are not sustained would bear the cost. If the arbitrators feel that the assertions are pretty well divided, they often divide the cost.

Q With respect to the time involved, how long does it take to get arbitration underway and to get a resolution of the dispute?

A Generally, my experience has been in about three weeks to two months.

Q And in the arbitration matters that you have been involved in, has your company ever had occasion to appeal an arbitrator's award to a court of competent jurisdiction?

A No, sir.

Q And in the same vein, what has been your experience with respect to the claimants?

A We have never had a claimant appeal a decision either.

Q Now, would you be familiar with the procedures and time involved in litigating claims of the type that we have been discussing?

A Yes, sir.

Q Could you give me some examples of time in the jurisdictions with which you are familiar?

A Well, in California in two recent cases I can think of, the time for one was approximately two and a half years and for another has been over three years and in the State of Massachusetts, we have found that the time on claims runs about three to four years from the time of commencement of litigation to the time of the actual termination of the trial. This is also true except in small claims matters of very nominal amounts in New York, Illinois and Florida.

Q Have you become aware recently of a step taken by the courts or certain courts in New York State with respect to proceedings where the recovery sought is $3,000 or less?

A Yes, sir.

Q And have you an exhibit here showing the rules of the New York Civil Court, Bronx County and the Rochester Civil Court, both New York State, with respect to the court requiring arbitration after a lawsuit is begun?

A Yes, sir.

Mr. Kiel: May I have that marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 227.

(Respondent's Exhibit No. 227, Witness Zola, was marked for identification.)

Q Have you had any experience with the rules which are shown in Exhibit 227, requiring compulsory arbitration?

A Yes, we had a claim brought against us in the Civil Court of the Bronx by a shipper and we were prepared for litigation in this matter and pursuant to these rules, without the request of either party or the consent of either party, pursuant to legislative enactment, the parties have been compelled into arbitration without the benefit of a trial and I researched further into this and apparently these are the pilot courts, that is, Rochester and the Bronx and this is about to be adopted throughout the State of New York so that all claims for $3,000 or less will, regardless of the fact that they are commenced by summons and complaint and litigation will be forced into arbitration.

Q Do you know whether or not a committee has been formed by the National Industrial Traffic League, the National Council of Farmer Cooperatives and the National Grain and Feed Association with respect to setting up an arbitration system to settle loss and damage claims?

A Yes, sir.

Q And was an article or reference to that committee as being set up published in the Traffic World on July 12, 1971 on page 22?

A Yes, sir.

Mr. Kiel: I ask that a copy of that page be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 228.

(Respondent's Exhibit No. 228, Witness Zola, was marked for identification.)

Q Have you in connection with your analysis of the problems and the setting up of arbitration been in contact with the American Arbitration Association?

A Yes, sir, many years ago I started to be in contact with them.

Q And I show you two letters addressed to you, one dated August 15, 1968 from the American Arbitration Association and another --

A That is in California.

Q And another dated September 23, 1968 from the American Arbitration Association in New York City?

A Yes, I recognize those documents.

Mr. Kiel: May I have the first letter from the American Aribtration Association, San Francisco, California marked for identification, please.

Exam. Reilly: Marked for identification as Exhibit 229.

(Respondent's Exhibit 229,
Witness Zola, was marked for
identification.)

Mr. Kiel: May I ask that the letter from the American Arbitration Association, New York, New York, be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 230.

(Respondent's Exhibit No. 230,
Witness Zola, was marked for
identification.)

Q Will you tell me whether or not these letters were of any consequence to you in determining how your company would use arbitration?

A Yes, sir, when we first were considering the use of it, these letters were part of the results of our investigation. Exhibit 230 from the American Arbitration Association here in New York indicated two alternative clauses that were being used by interstate carriers of which the Association was aware providing for arbitration in New York City and you will nitice that some of the language I have alluded to, that is "Any claim or controversy --" et cetera, we took from these proposed forms of the American Arbitration Association.

Q Have you been concerned about legislation involving arbitration of claims for loss and damage involving interstate transportation?

A Yes, sir.

Q And in that respect, have you been corresponding with a Congressman Burke of the House of Representatives with respect to a bill which he has introduced in Congress to set up within the Interstate Commerce Commission a panel of arbitrators to arbitrate certain types of loss and damage claims involving carriers not in the field that you are in, but regulated motor carriers regulated by the Interstate Commerce Commission?

A Yes, sir.

Q And does this file show the Congressman's letter, the copy of the bill and your letter?

A Yes.

Mr. Kiel: May I ask that the Congressman's letter and a copy of the bill be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 231.

(Respondent's Exhibit No. 231,
Witness Zola, was marked for
identification.)

Exam. Reilly: How-much more minutia are we going to get on this question of interpretation of arbitration, Mr. Kiel? It seems to me that we have passed the point of cumulative evidence long ago.

Mr. Kiel: Mr. Examiner, we did not begin or put in evidence with respect to arbitration previously. We have, as I indicated in the earlier part of my examination of Mr. Zola, skipped over the arbitration situation so that we could put it in all at one time. We don't have a great deal of additional evidence with respect to this, but what we do have, we consider to be of utmost importance. I feel that we have an obligation here or I have an obligation to protect my client in this investigation and I believe that a statement by Mr. Browning in this record at page 230 is the key to what this case is about.

Mr. Browning indicated, if I might just have a moment --

Mr. Browning: Mr. Examiner --

Mr. Kiel: Please, I am in the middle of answering the Examiner, please --

Mr. Browning: Make sure you quote me directly.

Mr. Kiel: Page 230 indicates that Mr. Browning said the issue is the unreasonable and unjust practice of AAAcon disallowing legitimate claims based upon interpretations of unreasonable provisions in the bill of lading.

Now, this type of provision is what Mr. Browning had reference to and this type of provision has to be carefully and conscientiously and fully developed and I feel that all of this information with respect to arbitration and the exhibits that we are attempting to introduce are essential if we are to present the defense of respondent.

In addition, Mr. Examiner, the Commission indicated in ex parte 263 that they had not yet had full information about this process and I feel that this record may be the streak upon which the Commission will be in position to find "Yes, this is a place to start and approve an arbitration arrangement for certain types of carriers."

And I feel that it's essential that this kind of evidence be made available to the Commission and to the Examiner for a determination in this type of proceeding. I will try to be as brief and as fast as I am able, I can assure the Examiner.

Exam. Reilly: It seems to me that all you are trying to do is to establish that other people and other groups use arbitration and you come to the result or lead me to the result that therefore arbitration is good.

Now, I don't know whether it's good or bad or indifferent but the fact that someone else uses it doesn't make it good.

Mr. Kiel: No, but it does establish the bona fides that we acted as reasonable men in establishing provisions which are being questioned as whether or not they are just and reasonable and I think it's essential that we have the information in the record to show that we acted in a reasonable manner. I think that is part of the testimony that the Commission has put us to by its order in instituting this investigation.

Exam. Reilly: Well, I am not very happy with the situation, but I will let you proceed with it a little while longer.

Q Mr. Zola, would you please refer back to Exhibit 162 and explain the last sentence of the conditions shown on there, beginning with the words "should the arbitrator"?

A Yes, this is again a provision which we developed after extensive experience with arbitration in the course of our dealings with the shipping public and the last sentence makes really two provisions.

One is that it requires the enforcement by the arbitrator of rules of evidence which would permit cross examination, the exclusion of irrelevant and immaterial evidence and the second is that it requires the uniform enforcement of the agreement, that is the bill of lading agreement which incorporates by reference therein and makes a part thereof, the uniform straight bill of lading so that there is in one tribunal a standard application of law and procedure to the claims of shippers and that different shippers in different locals do not get different claims settlement treatment which different treatment the Commission has considered harmful and wrongful in its report that has been alluded to and the provision which we drafted after consultation with experts in the field provides that the arbitration shall be reviewable in totality if the procedures outlines, that is to say, the enforcement of the procedural and the substantive law is not followed and one of the great difficulties in arbitration that has been noted by the Commission is that general judicial review is limited and this course permits full judicial review and arbitration de novo wherever necessary in order to make sure that Federal law is complied with and uniform standards apply throughout every shipper claim.

Q Is Arbitration used by other carriers subject to the jurisdiction of the Interstate Commerce Commission in settling loss and damage claims?

A Yes, sir.

Q Do you know of a competitor of yours who uses and provides for a similar arbitration provision in its delivery receipt?

A Yes.

Q And do you have a copy of that?

A Yes, sir, the only difference in the provision is that his arbitration is in the State of Illinois and in the City of Chicago and the uniformity of application would be there.

Q And is that maintained by Auto Driveaway Company?

A Yes, sir.

Q Now, sir, in addition to that, are there other carriers subject to the jurisdiction of the Commission who use arbitration in settling claims?

A Yes, sir.

Q Would you tell what type of carriers you know of that use that?

A I know of household goods carriers that use it, trucking companies, I know that railroads use it and water carriers subject to the Commission's jurisdiction, use it extensively.

Q Now, upon what basis do you believe that arbitration is proper for the handling of disputes of the type involving claims for loss and damage?

A On two basis. One is extensive research that we have done into the area; and the second is the decisions of the courts concerning cases involving our company where there has been resistance to arbitration.

Q And with respect to the naming of a specific site such as New York or Chicago as a point of arbitration?

A That has been held up generally by the courts of the several states and the Federal courts with regard to other contractors, that is, other business entities making contracts, other shippers, other carriers subject to the provisions of the Interstate Commerce Act and specifically our company with regard to the provisions of the bill of lading which is Exhibit 162 and its predecessors.

Q Are you familiar with the case in the United States Southern District Court of AAAcon and Teafitiller?

A Yes, sir.

Q And do you have a copy of a decision, a certified copy of the decision in that case?

A Yes, sir.

Mr. Kiel: May I have that marked for identification, Mr. Examiner.

Exam. Reilly: Marked for identification as Exhibit 232.

(Respondent's Exhibit No. 232, Witness Zola, was marked for identification.)

Q Have you a copy if another matter, a copy of the opinion of Judge Wyatt, Judge in the Southern District of New York, involving an arbitration question?

A Yes.

Mr. Kiel: I ask that that opinion be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 233.

(Respondent's Exhibit No. 233, Witness Zola, was marked for identification.)

Q Do you have a certified copy of the judgment in that proceeding?

A Yes, sir.

Mr. Kiel: I ask that be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 234.

(Respondent's Exhibit No. 234, Witness Zola, was marked for identification.)

Q Do you have a copy of an order in the United States District Court in California involving a requirement that parties arbitrate a dispute with respect to a claim?

A Yes, sir.

Mr. Kiel: I ask that be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 235.

(Respondent's Exhibit No. 235, Witness Zola, was marked for identification.)

Q Are there similar decision involving the requirement for arbitration in any other Federal Districts?

A Yes, sir, among them, the Northern District of Ohio, Eastern Division, that is Docket No. 71-1142.

In the United States District Court for the Middle District of Florida, Tampa Division, Docket No. 71-147. And there are other decisions in California, Federal District Courts and Massachusetts, Federal District Courts.

Q Have any of these District Court decisions been upheld by any Appelate Court?

A Yes, sir.

Q And I show you an order for the United States Court of Appeals for the Second Circuit and ask you if that is an order affirming a decision requiring arbitration?

A Yes, sir.

Mr. Kiel: I ask that that order be marked for identification.

Exam. Reilly: It will be marked as Exhibit 236.

(Respondent's Exhibit No. 236,
Witness Zola, was marked for
identification.)

Q What -- was the decision in this proceeding, which is Exhibit 236, made from the bench by the court?

A It was made in open court, yes.

Q And in order to understand the position that you took in connection with that litigation, have you a copy of the brief which sets forth your position?

A Yes, and it also sets forth all of the issues raised before the Court of Appeals.

Mr. Kiel: I ask that that be marked for identification, please.

Exam. Reilly: It will be marked for identification as Exhibit 237.

(Respondent's Exhibit No. 237, Witness Zola, was marked for identification.)

Q With respect to all of the decisions that we have been referring to, have all of them been based upon the arbitration provision in your bill of lading?

A Yes, and specifically the provision that arbitration be referred to the general situs of New York.

Q And have you also made available for our use a listing of Federal and State court decisions where arbitrations similar to yours have been upheld and required?

A Yes, sir. This is part of the papers that we have submitted upon which these decisions have been based.

Mr. Kiel: I ask that it be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 238.

(Respondent's Exhibit No. 238, Witness Zola, was marked for identification.)

Q With respect to the proceeding which resulted in the decision in Exhibit 232, would you briefly explain what the issues were as they related to arbitration? I don't want to know about the case, just the issues as they related to arbitration.

A Yes, sir. This was a case where the shipper had received the bill of lading, but had not -- not had received the freight bill which incorporated the bill of lading by reference. As I mentioned in my earlier testimony, it had been our practice to issue a freight bill which did not include the bill of lading agreement which was printed as part of it, nor did it include the arbitration provision.

Nevertheless, the courts have held under Federal law and by incorporation of an arbitration provision is valid and enforceable including one which requires jurisdiction in a jurisdiction other than in the one litigation has been commenced. The court heard the parties in this matter at some length and then rendered its decision. This decision of Judge Bryant was based mostly upon his own research and not upon what I thought was extensive work on the part of counsel. The result of it was that he held that the arbitration agreement valid, that is on page 10, he says "I hold the arbitration agreement valid." He considered the issue of arbitrating in a place other than in the form in which litigation had been commenced. And interestingly on the last page, the final paragraph, the two sentences states "The only matters remaining at issue are the amount of damages and the question of fraud and inducement in the contract. Such matters are peculiarly suitable for arbitration.

Now, he brings out in his opinion that this old technique has been raised since -- for the last 30 years since the enactment of the Federal Arbitration Act for people to attempt to get out of arbitrating anything they would like to get -- they would always say that the contract had been induced by fraud. As a result, the Supreme Court of the United States in the Prima Paint Case held that all assertions of fraud in the inducing of a contract for arbitration were determinable by the arbitrators in the arbitration; subject, of course, to the judicial review after the fact.

Q Would you please just refer briefly to the Aurora matter which is covered by Exhibits 233 and 234?

A Yes, this again was a decision of Judge Wyatt based upon his own research. That is to say, it didn't incorporate any of the references we submitted to him and the issue there was that had been raised by the respondents --

Mr. Browning: Excuse me just a second. I am not going to be able to keep up here. You are moving so fast that I just can't keep up.

The Witness: I'm sorry.

Mr. Browning: I am losing track of things. What are we talking about now?

The Witness: Exhibit 233 and 234.

A The issues raised by respondents which was an insurance company was the question of service of processor pursuant to the bill of lading provision of AAAcon providing for service of process by mail and the other was whether or not the fact that litigation had been commenced in the State of Indiana precluded arbitration or whether arbitration in another form, that is New York, would oust the Indiana courts. He said that arbitration acted as an adjunct to it and the service of process provisions were valid and enforceable and have since become adopted by the laws of several states including California and the last page, page 3 indicates that the Judge there considered the applicability of our arbitration agreement provision 249 United States Code 2011 and he indicated that it was proper under the Carmick amendment and he then went on to say that the venue provision was proper, that is to say, the question of service of process.

I might note that arbitration decisions are not self-enforcing.

Q We will get to that.

A And the order in 234 summarizes as best we could the language of the judgment. It was submitted on notice to both sides and constitutes their understanding together with the Judge's review.

Q Basically with respect to Exhibits 236 and 237, what was the issue posed to the Second Circuit Court and what were the issues that they directed themselves to in open court in arriving at their decision?

A The issues presented to the Second Circuit Court of Appeals were whether or not the court had jurisdiction, whether or not the arbitration agreement provision deprived anybody of any right they had under the Interstate Commerce Act or otherwise have a right to determination by litigation and thirdly, whether or not the uniform straight bill of lading terms and conditions which are part of AAAcon's tariff, in any way were violated by or differed from the requirements of law as indicated -- not the requirements of law, but the contract provisions of the arbitration provision of Aaacon's agreement.

Q Now, did the decision relate only to the uniform bill of lading or to the uniform bill of lading and the bill of lading agreement which incorporates the provisions of the uniform bill of lading and which you use?

A It referred to both. The respondent appellant had raised those issues.

Q What is the Circuit Court find?

A The Circuit Court found there was no inconsistency in the provisions in the terms and conditions of the uniform straight bill of lading and the arbitration provision contained in AAAcon's bill of lading and that the provisions for service of process were proper and these were sustained.

Exam. Reilly: We will take a short recess.

(Recess taken.)

Exam. Reilly: On the record.

Q (By Mr. Kiel) Did the determinations in the decisions starting with Exhibit 232 through 236 have any effect upon your company's determining what should be in its arbitration provision as is now used in its bill of lading?

A Yes, those exhibits together with the exhibits in reverse order through 229 were a large part of the basis of our making the final language that appears in the bill of lading, Exhibit 162.

Q Will you tell me whether or not in your opinion the arbitration provision in your bill of lading stops a shipper from instituting suit in a State or Federal Court in connection with an action against your company?

Mr. Browning: I object to that on the grounds that the arbitration provision as appears in the bill of lading is set forth in Exhibits 162 and 159. Now, I submit it speaks for itself.

Exam. Reilly: I think it does, too. Whether it stops it or not is the old story of "Can you sue me?"

Q Have you ever stopped any claimant from starting suit in a state or federal court because of the arbitration agreement entered into prior to the initiation of the transportation?

A No.

Q Will you tell me whether or not you consider arbitration, as you provide for it to be an adjunct or in place of a court proceeding?

A It's an adjunct to and in place of a court proceeding. It merely makes a factual determination on the question of existence and the amount of liability if not then voluntarily agreed to by the parties can go into a court proceeding to enforce the arbitrator's decision.

Q Would you say that arbitration is not self-enforcing?

A It is not, no, sir, neither under the State Act, the Uniform Arbitration Act or the Federal Arbitration Act.

Q Have you ever been involved in any proceeding involving AAAcon where a court was ousted of jurisdiction?

A No, sir.

Q Would you tell me what was the focal point for you reviewing and setting forth your arbitration proceedings or processes?

A With regard to the question of the choosing of a local or a situs to enforce the arbitration and for the arbitration as indicated in our bill of lading, Judge Friendly of the Second Circuit Court of Appeals drew a distinction two years ago which has become the hallmark for arbitrators throughout the United States. It has been referred to me by many experts in the field in the Inducia case, which is discussed in Exhibit 237, in which he drew a distinction between provisions in contracts in business agreements and shipping agreements and bills of lading specifically providing or limiting the place in which litigation could be commenced and provisions in the bills of lading providing for a situs for arbitration.

He held that the former was unlawful and distinguished the latter and held that the latter was lawful and this decision has been upheld.

Q Do you now apply the arbitration agreement in your bill of lading equally as it effects any and all claimants?

A Yes, sir.

Q There was some discussion by one or more witnesses who testified and I believe they were attorneys, with respect to questions of contempt proceedings being initiated against their clients for their refusal to arbitrate as ordered by a court of competent jurisdiction. Would you explain that situation, please?

A Yes, sir. It is, in the vast majority of cases, involving arbitration with our company, there is no court proceeding. That is to say, our company and the claimant, very often at the claimant's instigation engage in an amicable arbitration which provides a private expeditious, inexpensive means of the settlement of the determination of disputes. Occasionally, however, there are individuals who, after they have agreed to arbitrate and indeed I think one of the cases presented by the Commission, it will show in that particular case that an agreement to arbitrate after the fact the claim having arisen, seek to get out of arbitration for whatever reason they deem being appropriate. In many reasons, I think litigation allows them additional pressure with regard to the bringing of cases in exotic jurisdictions. At any rate, the provisions under the Federal law and State law require, that is to say, the Interstate Commerce Act, that shippers and shipper claims be treated equally and in order to insure that treatment is equal, we seek to enforce the arbitration provision and the orders of the courts. I might add that the arbitration provision itself does not and can not lead to contempt. The only basis upon which a contempt order can be issued is upon a violation of an individual wilfully of an order of the court. Now, if the arbitration provision were not enforced by us with regard to the reluctant and recalcitrant claims, there would be a disparity in our claims treatments between those claimants who voluntarily agreed to comply with arbitration of their claims and those which do not and we feel this would be an unlawful discrimination under the Interstate Commerce Act.

Q Now, sir, have you read the decision of the Commission in 340 ICC with respect to the Commission's discussion as to the positions of the various parties in a proceeding with respect to the use of arbitrations to settle the type of claims that we have been discussing in this proceeding?

A Yes, sir.

Q Now, do you know what position the Commission indicated that the Bureau of Enforcement took with respect to the use of arbitration for the handling of claims?

A Yes, the Bureau of Enforcement supported it.

Q Did the Commission refer to that at page 675?

A Yes, sir.

Q Do you know what position the transportation department of the United States took with respect to that same matter?

A The Department of Transportation took a position also encouraging the use of arbitration and these matters I might add, are not in the initial order of ex parte 263 and were suggested voluntarily by these two government bodies.

Q And what was your understanding of the position of the Commission in that decision?

A The Commission, I think, agreed wholeheartedly with the Department of Transportation and the Bureau of Enforcement that arbitration would be a good thing and they stated at one point that they know of nothing that would proscribe arbitration and at another point they said they would seek to encourange arbitration.

Q By assigning your bill of lading agreement, does a shipper agree to utilize arbitration for the settlement of disputes including claims?

A Yes, sir.

Q And that would be an agreement entered into before the shipment moved?

A Yes, sir.

Q Is there ever any situation where an agreement of similar nature is entered into or agreed to by a shipper or shipper's representative after the shipper has moved?

A Yes, sir.

Q And did the Commission make any reference to that situation in its decision in ex parte 263?

A Yes, they stated that they felt that it was proper to have arbitration agreements entered into between the shippers and the carriers prior to the engaging in the transportation so that all shipper claims would be treated uniformly. This was emphasized over and over in the report.

Q What is your feeling on that with respect to arbitration, is that what you have been aiming at?

A Yes, we feel that in that way shippers seeking unfair advantages and those with limited means would be treated equally. All shippers' claims would be handled in a uniform manner.

Q Did you make known to various representatives of the Commission the reasons and the basis for the use by your company of the arbitration provision and the reasons you thought it was proper?

A On many occasions.

Q Would you just briefly tell us about that?

A We had a meeting with, well, I presented -- having had informal discussions with the Secretary of Insurance of the Commission, I presented them with a summary of the investigative work we had done on the question of the applicability of arbitration on two claims dispute settlements and I presented that, I think it was about a 20 page memorandum. In addition, I had a conference in

New York with Mr. Browning of the Bureau of Enforcement in November of 1970, I believe, at which time we want over certain aspects of the arbitration practices of AAAcon as they relate to Interstate shipments of automobiles and specifically some of the questions we went over was whether the arbitration was self-enforcing and whether it was an adjunct to court cases and I stated that it was an adjunct to court cases and if the case was started by a litigant any place in the United States, the case was not dismissed because of arbitration, but the arbitrators could make a decision on the facts subject to the review of the original court case brought by the claimant.

At that time Mr. Browning informed me that he saw no particular barriers to the arbitration agreement used by our company and that if he did have any objections or any further questions or insights, he would contact us before taking any further action.

Q And were you contacted?

A At no time, not until we received -- well, since it has obviously been raised in this proceeding, since we raised the -- since we received the notice of April 12 of last year.

Q With respect --

A I might add that I submitted a memorandum to Mr.

Browning similar to the one that I submitted to the Department of Insurance in Washington.

Q And did another officer of your company meet and discuss with a representative of the Bureau of Enforcement the position of your company with respect to arbitration and its bill of lading in another meeting in Washington?

A No, that was myself -- oh, yes, there was another representative, there, yes.

Q Now, is there any statute which permits persons to enforce arbitration and arbitration agreements, any Federal statute?

A Yes, the Federal Arbitration Act.

Q And does that statute have anything to do with the jurisdiction and the grounds for jurisdiction of arbitration?

A Yes, sir, it involves all contracts involving interstate transport of goods of any sort. One of the two clauses in Section 1 of the Act is that contracts involving maritime transactions and contracts involving commerce which is then gone on to be defined as interstate commerce, and I reviewed in Washington in the library of Congress the legislative history of that act and the Senate debates clearly indicate and I have given the Commission these citations in the past, that the interstate transportation of goods was specifically within the contemplation of the Federal Arbitration Act and I might add that Judge Friendly in that Inducia Case that I referred to, indicated when referring to the fact that arbitration was incorporated in bills of lading, that the Federal Arbitration Act was enacted prior to the amendments of the Interstate Commerce Act and, therefore, was within the contemplation of Congress at the time the amendments were made and was intended to be considered in harmony therewith.

Q Does that Act provide the judicial review of arbitration decisions?

A It does.

Q Does it provide for selection of arbitrators?

A Yes, sir.

Q With respect to the cases which the Bureau has brought up in this proceeding involving one Levy and one Whitney, of what use would arbitration be in those cases?

A In the Levy case, there was no question presented -- there was no dispute between Mr. Levy and AAAcon as to the liability of AAAcon with regard to the damage of his vehicle. The sole question there was whether or not AAAcon's insurance, liability insurance carrier or Mr. Levy's liability insurance carrier was responsible to discharge the obligations to the third party who had asserted a claim against Mr. Levy and in that case since it was purely a matter of law which would have been subject to review in arbitration, arbitration of that matter could have occurred in my experience within one month. As it turned out, that case has been in litigation for approximately a year and a half, preliminary proceedings have not been complete, attorneys for AAAcon, Levy, Home Insurance Company, Fireman's Fund which is Levy's insurance company, have been engaged in extensive litigation and I imagine that case will cost in terms of attorney's fees to all the parties litigant including Mr. Levy, in excess of $10,000 and that that matter will not be determined for several years.

In the Whitney case, the question, as we will develop in our records, the problem in that case was the paucity of evidence surrounding either the substantiation of the claim or the facts that occurred and that was a matter which in a court trial, it has been my experience, will create difficulties of proof and will create obligations and obstacles to determination. I think, in my opinion, from speaking with Mr. Jacobs and the other attorneys who are actually handling the case, they have no basis of proof at all and the case may be dismissed.

Mr. Browning: I object to that.

Exm. Reilly: Objection sustained.

Mr. Browning: These are wild assertions; that they will have great difficulties of proof and additionally they have indicated to me that their client will not be available to appear in courts in Boston and that they are going to, as a result of difficulties with the evidentiary requirements of the State of Massachusetts which would not occur in arbitration.

Q In your opinion, would it have been desirable if you were the claimant to have had arbitration in that --

A Yes.

Q Now, with respect to the decision of the Commission in ex parte 263, did the Commission indicate certain concerns about enforcement and about the ability of parties to have an arbitration award set aside?

A Yes.

Q Would you tell us how your provisions work?

A Our provisions, as I alluded to in part earlier, provide in effect for a court of competent jurisdiction to make a review as to whether or not the applicable Federal law with regard to carriage, with regard to proof of claims and the uniform straight bill of lading, which is incorporated in the bill of lading agreement of AAAcon which itself is required to be enforced by the final sentence of our bill of lading agreement, have been in fact enforced so that while it is the normal course in arbitration, the review of the courts are somewhat limited.

In our case pursuant to the provisions that we have put in the last sentence of our bill of lading, the judicial review is not limited and it would be the same as an appellate review of a regular, litigatory proceeding.

Q Do you have any opinion as to whether or not that meets the opinion of the decision in the ex parte 263 decision?

A It would meet it in full. The Commission was also concerned with an available pool of arbitrators and I might say that with regard to the transportation of certain kinds of cargo, essentially some of the more unusual equipment that carriers are called upon to transport, the experties necessary might be difficult to find. However, with regard to the transportation of automobiles and damages thereto, the experties is reaily available so that I don't think that finding a pool of competent arbitrators, especially in a commercial area like New York City which has the greatest concentration of negligence lawyers in the world, it would not be difficult at all.

Q Have you been able to secure what you consider to be competent arbitrators of those issues?

A Yes, sir, so much so that neither we nor the respondents in arbitration have ever sought to appeal those decisions.

Q Has your position with respect to arbitration been affirmed by decisions of the various courts in which they have been tested?

A Yes, sir, not only the Federal Courts, which we have alluded to, but also courts in the State of New York, the State of Illinois, the State of Ohio, the State of Massachusetts, the State of California, the State of Texas, the State of Florida, the State of Oregon, the State of Washington,the District of Columbia, the Commonwealth of Pennsylvania and probably one or two others which escape me.

Q Mr. Zola, --

A And I might add that -- well, I won't add anything.

Q Is there anything else that you deem necessary to be covered in connection with the arbitration provision in your bill of lading?

A Yes, sir, those state enforcements of the arbitration were enforcements by State Courts of our arbitration provision and the requirement that the arbitration have as its situs, New York City, again with the understanding that the arbitrators may be selected and may reside and stay anywhere they wish, but these are foreign jurisdictions, that is to say, foreign to the State of New York which have sought to enforce arbitration both under the laws of their states and under the uniform arbitration act which have been adopted in almost every state in the United States.

Q Mr. Zola, one of the parties to this proceeding is the Department of Consumer Affairs of the City of New York, Have you had anything to do with that agency prior to your appearance at this hearing this week?

A Yes, sir.

Mr. Sarshik: Objection, that subject matter is not before this Commission at all. I object to this whole line of questioning.

Exam. Reilly: On what basis?

Mr. Sarshik: Because the subject matter of what subject matter he has had with the Department or whether he abides by our rules or whether he has discussed any claims at all with the Department, has nothing to do with whether there should be a cease and desist order against the party here.

Exam. Reilly: I will let him answer.

A Yes, sir, we have had conversation with them.

Q And what was your purpose in meeting with them?

A We had a very unpleasant experience of hearing over the radio and reading excerpt summaries in newspapers of a release issued by the Department which release has been made an exhibit in this proceeding and at that time, after regaining our composure, inasmuch as we had not been contacted concerning the contents of the release or the issuance thereof prior to its being made public, we wanted to find out what it was all about, so we made arrangements by calling Mr. Bruce Rattner, who is an official with the Department and at that time we first requested in connection with the release, the cases which they were referring to which were not identified in the release or identifiable to us except for one instance, from the release, and secondly, we wished to know from him the basis of the allegations contained therein.

An appointment was made with the Bureau and I sat down and spoke with Mr. Sarshik and Miss Marjorie Smith and Mr. Rattner who had to excuse himself because of pressing business.

Q And did you at the termination of that conference make a memorandum of what had occurred?

A Yes, sir.

Mr. Sarshik: Objection. A memorandum is not a qualified document as to what occurred. There was no tape recording made during the conversation itself and the Department objects to this as being a satisfactory example of what occurred during the discussion.

Exam. Reilly: Was this made reasonably contemporaneously?

A I came back that day and dictated part of it that
day and part of it the next morning.

Mr. Sarshik: It was not a memorandum. It was a letter and the Department objects to that.

Mr. Kiel: May I have it identified so Mr. Sarshik may see it?

Exam. Reilly: Yes. Marked for identification as Exhibit 239.

(Respondent's Exhibit No. 239, Witness Zola, was marked for identification.)

Mr. Sarshik: What is this being introduced for?

Exam. Reilly: It's just being marked for identification. You can mark anything for identification. If you have an objection at the time it's offered for receipt, then you can object.

Q Subsequent to the meeting about which you made the
memorandum, which is Exhibit 239, did you speak with Mr.
Sarshik?

A Yes, sir, on the telephone.

Q And did you thereafter write him a letter making
certain offers of information and material for the
Bureau of Consumer Affairs?

A Yes, sir.

Mr. Kiel: I ask that a copy of that letter be marked for identification.

Exam. Reilly: It will be marked for identification as Exhibit 240.

(Respondent's Exhibit No. 240, Witness Zola, was marked for identification.)

Q Would you tell us about the telephone call which occurred prior to the writing of the letter which is marked for identification as Exhibit 240?

A Yes, in light of my conclusions and in fact they are statements, that they had no idea as to whether or not we had the insurance policies which were referred to in our sales literature and since they seemed genuinely surprised that --

Mr. Sarshik: I object to this testimony as being hearsay and who is "they" that he is referring to.

Exam. Reilly: He may state who they are.

A Since Mr. Sarshik seemed surprised as to the number of claims that were settled and inasmuch as Mr. Sarshik refused at any time during the proceeding, that is the meeting or prior to the meeting or subsequent to the meeting, to identify any of the claims in that press release and in fact, presented me with a series of three names which had nothing to do with the facts of those cases with the alleged situations in the press release, I felt it incumbent to try and offset what was the -- what I alone felt was the ill-advised conclusions of the Department with the facts and I offered to make our records available to him and I further had to make a correction which I did orally to him and it's even indicated in the memorandum. On page 2 I stated that we had approximately 400 claims when in fact, I went back and checked it out, we had about 580 claims.

Mr. Kiel: May we go off the record for just a second?

Exam. Reilly: Off the record.

(Discussion off the record.)

Exam. Reilly: Back on the record.

Q Does Exhibit 239 set forth your understanding of the discussion which you had with the Bureau of -- your recollection of the discussion you had with the Bureau of Consumer Affairs?

A Yes, sir.

Mr. Browning: Objection. I would like to be heard.

It goes much further than that. On page 2, much further. In fact, it gets into matters which were litigated in Florida in connection with this hearing. I object to any reference to this exhibit. As a matter of fact, in testimony.

Mr. Sarshik: I join in that. I object to any questions being posed on the basis of this memorandum. It is irrelevant and immaterial and contains hearsay matter.

Mr. Kiel: Well, then my position in this proceeding is that the Bureau of Consumer Affairs has nothing to do with this proceeding. If counsel for the Department is now agreeing with me --

Mr. Sarshik: I am not agreeing with you at all.

Mr. Browning: Mr. Examiner, he is joining in my objection to any reference to this exhibit.

Exam. Reilly: I don't understand the basis of your objection, Mr. Browning.

Mr. Browning: Well, I --

Exam. Reilly: Are we talking about this memorandum or meeting of January 26?

Mr. Kiel: That is what I understand, yes. I believe the witness has answered the question. I think the answer was "Yes" and I don't see that it has any great importance one way or the other, but I think it should be in evidence in this proceeding. I think it's a proper question.

Exam. Reilly: Since I don't recall the question, I am not in any position to rule on it. Do you know what the question was, Mr. Kiel?

Mr. Kiel: If he recalls what is in the memorandum is what transpired and his answer was yes.

Exam. Reilly: Well, I would hope that that would be his answer. The objection is overruled. And your objection is also overruled, Mr. Sarshik.

Mr. Kiel: May we go off the record for a moment?

Exam. Reilly: Yes. Off the record.

(Discussion off the record.)

Exam. Reilly: Back on the record.

We will recess at this time until tomorrow morning in this room at 9:30.

(Whereupon, at 4:35 p.m., the hearing was adjourned until Thursday, March 23, 1972, at 9:30 a.m.)

* * *

BEFORE THE INTERSTATE COMMERCE COMMISSION

- -x

In the Matter of: :

AAACON AUTO TRANSPORT, INC., :
Investigation and Revocation of Certificate DOCKET NO.
:MC-C-7287

AAACON AUTO TRANSPORT, INC.,
Petition of Declatory Order :DOCKET NO.
MC-C-7287

AUTO TRIP USA, INC., :
Freight Forwarder Application, New York, New York DOCKET NO.
:FF-359

- -x

26 Federal Plaza
New York, New York
March 23, 1972

MET: pursuant to adjournment, the above-entitled matter came on for further hearing at 9:30 a.m.

BEFORE:

JOSEPH H. REILLY, Examiner

APPEARANCES:

(AS HERETOFORE NOTED)

EXHIBITS

NUMBER		FOR IDENTIFICATION
277	(Witness Zola)	1824
278	"	1825
279	"	1827
280	"	1828
281	"	1832
282	"	1833
283	"	1835
284	"	1837
285	"	1839
286	"	1841
287	"	1844
288	"	1848
289	"	1849
290	"	1854
291	"	1855
292	"	1857
293	"	1858
294	"	1862
295	"	1864
296	"	1870
297	"	1886
298	"	1888
299	"	1892
300	"	1896
301	"	1897
302	"	1900
303	"	1901
304	"	1904
305	"	1904
306	"	1905
307	"	1906
308	"	1906
309	"	1907

I N D E X

WITNESS	DIRECT
Respondent Ralph Zola	1763

E X H I B I T S

NUMBER	FOR IDENTIFICATION
Respondent's	
No. 241 (Witness Zola)	1763
242 "	1764
243 "	1765
244 "	1769
245 "	1774
246 "	1774
247 "	1776
248 "	1777
249 "	1778
250 "	1778
251 "	1779
252 "	1779
253 "	1784
254 "	1787
255 "	1789
256 "	1790
257 "	1791
258 "	1793
259 "	1794
260 "	1795
261 "	1795
262 "	1796
263 "	1797
264 "	1804
265 "	1804
266 "	1805
267 "	1811
268 "	1816
269 "	1816
270 "	1820
271 "	1821
272 "	1821
273 "	1822
274 "	1823
275 "	1824
276 "	1824

PROCEEDINGS

Exam. Reilly: The hearing will be in order.

Mr. Kiel: I have two or three things, Mr. Examiner, that I should have been aware of yesterday evening and put in before Mr. Zola continues his testimony with respect to the witness of the Bureau, and if I might, I would like, at this time, to offer for marking for identification the copy of the Order in the case of Aaacon and David Levine. The Circuit Court of Appeals Order and the brief of Aaacon in that proceeding have been marked for identification. This will give the basis and background of the original litigation.

(Respondent's Exhibit No. 241,
Witness Zola, was marked
for identification.)

CONTINUED DIRECT

Q (By Mr. Kiel) Mr. Zola, was this matter litigated and opposed by Mr. David Levine?

A Yes, sir.

Q Was he his own attorney?

A Yes, sir, he is an attorney.

Q He is an attorney authorized to practice and he was also one of your customers?

A Yes, sir.

Q In connection with your discussions of your opinions as to the liability of your company pursuant to State Court Statutes and Opinions, is there an attorney in Miami, ——

Florida, with whom you consulted in attempting to determine the status of the statutes in Florida as you understood them?

A Yes, sir.

Q Did you write to him subsequent to the hearings in Miami in January?

A Yes. He had met with me at those hearings.

Q Do you have a copy of your letter?

A Yes, sir.

Q I show you that and ask you if what I have handed you is a copy.

A Yes, this is our file copy.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit No. 241.

(Respondent's Exhibit No. 242
Witness Zola, was marked
for identification.)

Mr. Browning: Exhibit 241?

Exam. Reilly: 242, the Levine discussion.

Q Subsequent to dispatching that letter, did you receive a reply?

A Yes, he sent me the material substantiating the position which I had requested in that first letter.

Q I show you a letter and ask if that's the reply?

A That is the reply.

Mr. Kiel: May I substitute a photostatic copy?

Exam. Reilly: Yes.

Mr. Kiel: I ask that it be identified.

(Respondent's Exhibit No.243, Witness Zola, was marked for identification.)

Q Mr. Zola, would you explain whether or not the opinion given in the attorney's letter, which is Exhibit 243, modified or changes or collaborates the testimony that you have given previously?

A It collaborates the testimony, and the opinion of Mr. -- of the section of insurance of the Interstate Commerce Commission which initiated my investigation in this matter.

Q The writer, Mr. Flynn, has he appeared in matters in Florida in which your company was concerned?

A He is an attorney with a firm that represents some of the liability insurance carriers of our company, and it was in this regard that he first contacted me while I was at the hearing. That is to say, he came into the hearing room in Florida unbeknown to who I was and explained it to me.

Q Did he appear in your behalf in any litigation in which your insurers were involved?

A Yes, sir.

Q Are you familiar again with the provisions in your new bill of lading as they relate to the question of special damages?

A Yes, sir.

Q With respect to certain of the witnesses who testified in behalf of the Bureau of Enforcement, did you hear testimony of one or more of them indicating that they were contending that they were damaged because they did not receive their automobile and therefore had to rent automobiles?

A Yes, sir.

Q Is that the only special damage situation that your company has had?

A No, sir.

Q Would you tell us what other special damage situations you have been involved in?

A The special damage situations that we have been involved in have included claims by shippers for loss of profits in connection with business dealings, that is to say, contract requirements with regard to which they claim because they didn't have their vehicle they weren't able to attend a business meeting, and also claims for damages on the part of finance companies for the failure to be able to tender a vehicle to the guarantor or finance paper on a given date, pursuant to which there would occur, with regard to that financed vehicle, a contract right on the part of the finance company to receive a fixed price for the vehicle regardless of the condition.

Q Can you be specific? Give us one situation.

A One specific situation that arose was with regard to General Motors Acceptance Corporation, which is a large financier of paper on the financing of automobiles, and they have what is called conversion dates. That is to say, within so many days after the nonpayment by someone who has financed an automobile of a periodic payment charge, they have the right to tender the vehicle back to the guarantor of the contract, the finance contract, and if they do, they are paid the guaranteed price in the contract, which is almost in every case much higher than the actual value of the vehicle. If they have financed a 1969 Chevrolet and there were payments due on the vehicle-- well, specifically one case was an Oldsmobile where payments were due on the vehicle and not met by the obligator of the paper and they had a right to tender the vehicle back to the guarantor of that finance paper, that is to say the note, and if they had done so, they would have received approximately $1,500 more in value than the actual value of the car.

Now, the car was -- there was a question there of whether or not the tender was within a reasonable time and whether or not as a result of that tender, which they asserted was not within a reasonable time, the delay entitled them to receive from us as a carrier, as part of our alleged damages to them, the difference in price between the actual value of the car that they were able to sell for themselves, which they did, and the guarantee price on the finance paper, the guarantee by the guarantor to whom they were going to tender the vehicle.

Q Did you speak to one Mr. H. F. Metzinger of General Motors Acceptance Corporation in Santa Ana, California about this matter?

A On numerous occasions.

Q Did he give you certain information in your conversations with him which you requested him to put in writing?

A Yes, sir.

Q Did he do that?

A Yes, sir, because the situation was such that we felt it was imperative to try and attempt to pin down the limits of our liability in this matter.

Q I show you a document and ask if that is the writing which collaborates the information that Mr. Mezinger gave you in the course of your discussions,in the regular course of your business?

A This is the information which Mr. Metzinger sent, part of the voluminousinformation which he sent to us.

Q May I put the original in the docket in this case or do you need it?

A I still need it because there is a claim outstanding.

Mr. Kiel: May I substitute a true copy of that original please?

Exam. Reilly: Yes. Marked for identification as Exhibit 244.

(Respondent's Exhibit No.244, Witness Zola, was marked for identification.)

Q Mr. Zola, on Exhibit 244, the copy which has been put in the record, under the notary public signature and the words "Notary Public," on the original, is there a stamp which reads "Official Seal, D. M. Martin, Notary Public, California, Orange County, my Commission expires May 30, 1975, and some sort of a seal in a box?

A Yes, the seal -- yes, there is and the seal says Seal of the State of California.

Q With the present bill of lading and the alternative provisions which permits or, in fact, requires a shipper, if it intends to assert certain damages in a situation, would that put you on notice if such an assertion was to be made?

A Yes, sir.

Q Would you tell us whether or not you have any dealings as to whether or not such a provision is reasonable or unreasonable?

A I think in light of the fact that in this particular case there was such a continual raising of questions on the issue of whether or not the car was tendered, the nature of the tender, the nature of the results of the tender, what we should have known in advance, I feel that a provision such as the one we have now included in our bill of lading will make very clear to us and to the public, the limits of our liability and we will know what we are undertaking and so will the public.

Q Would you please refer to your files and information as they relate to witness Slattery?

A Yes, sir.

Q Are you familiar with the movement concerning with which witness Slattery testified?

A Yes, sir.

Q Mr. Slattery testified that he wrote a letter to you with respect to a vehicle which he was expecting to receive which was in transit from California to Ohio. When your customers are concerned about possible delays, do you normally receive letters or telephone calls about that?

A We normally receive telephone calls if the customer is very anxious.

Q Immediately upon receiving Mr. Slattery's letter, what did your company do?

A We made inquiry of our San Francisco office and we found out that his car was located in Lawrence, Kansas, in the Lawrence, Kansas vicinity and that the driver had become ill in transporting the vehicle.

Q What did you do then?

A We wrote to Mr. Slattery informing him on the same day, that is to say, September 11th, that the car was located in the Lawrence, Kansas area and that we were going to make arrangements to have another driver dispatched, and at the same time immediately following this, we requested a State Highway Patrol from the State of Ohio becasue Mr. Slattery indicated that they thought there may be a question of damage.

Q In any event, did you receive any requests from Mr. Slattery asking that you do something in connection with notifying his insurance company?

A Yes, he wished us to notify his insurance company that the car was stolen, and --

Mr. Browning: I object to that. Mr. Examiner, I submit this is in the realm of hearsay. I submit it is not admissible.

Exam. Reilly: I am going to overrule your objection, Mr. Browning.

Q Did you so advise his insurance company?

A No, sir. We wrote them and informed them that we knew where the car was. They then contacted us again sometime later and said that again Mr. Slattery was attempting to file a stolen car claim and we called them up, and this went up and back with us telling them that the car had not been stolen and us having to tell -- them having to tell us of Mr. Slattery's intentions.

Q In any event, did you receive a letter from a newspaper in Cleveland about this matter, the newspaper being the Cleveland Plain Dealer?

A Yes, sir.

Q Did you respond to that letter?

A Yes.

Q When?

A We wrote to them on November 13th, of 1970.

Q What did you advise them?

A We advised them that the vehicle had been repaired, apparently there was some minor damage to it and was to be transported by our company.

Q Was a claim filed by Mr. Slattery in connection with this movement?

A Oh, yes, sir.

Q When was that?

A November 17, 1970.

Q Do you recall what the claim asserted?

A Yes. I will just have to --- I wish to make a correction. In looking through this, Mr. Slattery's original letter to us was of September 6th. Our original letter reply to him on receipt of the letter was dated September 11th. The letter of November 17th, that was dated that date by Mr. Slattery, was received by our office on December 8th and we could not account in any way for this very long delay. On the day we received the letter, we forwarded to him a questionary form to ascertain the facts concerning the delivery of the vehicle and the items claimed by Mr. Slattery for the damage. We had spoken to him on the phone and expected a reply immediately by return mail, and not having received one, we again wrote to him on December 10th requesting a response to our letter of December 8th. On December 15, 1970, we again wrote to Mr. Slattery asking for a response to our inquiry so that his claim could be processed because on December 12th, Mr. Slattery had written to us and informed us that he never received a copy of our letter of December 8.

However, on June 9th of the following year, that is 1971, some seven months later, Mr. Slattery's insurance company forwarded to us the original letter of December 8th, which had been filled out by Mr. Slattery.

Q Was that the letter that you sent to him?

A Yes, the very same one that he said he never received. He had personally forwarded it to his insurance company. His insurance company indicated that the letter --

Mr. Browning: I am going to object to any further testimony along this line - that this is not the best evidence. The best evidence would be these documents.

Mr. Kiel: Fine. We have the documents. We will put them all in.

The Witness: You can identify all of them. We haven't finished the testimony.

Mr. Kiel: Give me the ones in the order we put them in.

Q I show you a document dated September 11th and ask you to tell us what that is. (Handing)

A This is the letter that we wrote to Mr. Slattery in reply to his letter of September 6th. It informs him that we know where the car is and that we are going --

Mr. Browning: Mr. Examiner --

Mr. Kiel: The letter will show what it says. May I ask that that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 245.

(Respondent's Exhibit No. 245, Witness Zola, was marked for identification.)

Q I show you a letter dated October 7, 1970, and I ask you to identify that, please. (Handing)

A This is a letter that we received from Mr. Slattery's insurance company.

Exam. Reilly: Marked for identification as Exhibit 246.

(Respondent's Exhibit No. 246, Witness Zola, was marked for identification.)

Q Is Exhibit 246 the letter that you referred to in your testimony?

A Yes, in regard to his filing of a stolen car claim with his insurance company.

Q Did your company enter into negotiations with respect to payment of Mr. Slattery's claim to his insurance company, which in the meantime had reimbursed him?

A Yes, sir.

Q During these negotiations, with whom did you deal?

A Mr. Jack E. Detmer.

Q When the vehicle had been tendered to you by Mr. Slattery in California, were there notations made on the shipping document with respect to prior damage?

A Yes, sir.

Q Was there a provision on that bill of lading agreement with respect to released evaluation?

A Yes, sir.

Q Did you request a substantiation in an effort to complete work on this claim?

A Yes, sir. This is an interesting point. We find that most insurance companies --

Mr. Browning: Mr. Examiner, I am going to object to --

Exam. Reilly: All right, he hasn't answered anything but yes.

Q Did you bring to this hearing a copy of your letter of April 15, 1971, to the insurance company of Mr. --representing Mr. Slattery?

A Yes, sir.

Q I show you a letter and ask if it is a copy of a letter in your file which you sent to the insurance company.

A This is the original. This is my file copy original.

Q All right.

Exam. Reilly: Marked for identification as Exhibit 247.

(Respondent's Exhibit No.247, Witness Zola, was marked for identification.)

A It was one of several letters that had been written.

Q During the period of time then you had written the insurance company a number of letters?

A Yes, sir.

Q Without response?

A Without any response.

Q That's unusual.

A That is remarkably unusual. They are usually most anxious to have a payment made as quickly as possible.

Q What, in your opinion, is that delay attributed to?

Mr. Browning: Mr. Examiner, I object to that.

Exam. Reilly: This gets too speculative, Mr. Kiel.

Q Did you notify Mr. Detmer concerning the damage to the vehicle which has been noted on the bill of lading before you received it?

A Yes, sir.

Q Did you ever request him for information with respect to the difference between the value of the repairs that were required and which were caused by your agent in operating the vehicle, or your driver in operating the vehicle, as compared to the damages which were on the vehicle before you received it?

A Well, the answer to your question, we are still not sure that there was any damage caused by any of our agents, but we did make that request.

Q I show you a letter of October 5th and ask if that is a copy of such a request, and which is the copy of the letter which you sent to Mr. Detmer?

A Yes, sir.

Mr. Kiel: May I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 248.

(Respondent's Exhibit No. 248, Witness Zola, was marked for identification.)

Q Now, did it appear in your negotiations with Mr. Detmer that, in fact, instead of there being one claim against your company for one loss, that they, in fact, were asserting that there were two?

A Yes, sir.

Q Did you write Mr. Detmer about this on August -- October 4, 1971, and is this a copy of the copy of the letter which you sent to Mr. Detmer, as it appears in your file?

A Yes, sir.

Mr. Kiel: May I ask that that be identified?

Exam. Reilly: Marked for identification as Exhibit 249.

(Respondent's Exhibit No. 249, Witness Zola, was marked for identification.)

Q After writing on October 4, 1971, did you again write Mr. Detmer on January 6, 1972, a letter indicating you had not received a response to your letter of October 4th, which is Exhibit 249, and sent him another copy of that letter?

A Yes, sir.

Q Is this paper I hand you a copy of the copy of your letter you sent to Mr. Detmer?

A Yes, it is.

Mr. Kiel: I ask that that be marked for identication.

Exam. Reilly: Marked for identification as Exhibit 250.

(Respondent's Exhibit No. 250, Witness Zola, was marked for identification.)

Q How long was it before you got a response from the insurance company?

A From beginning to end, it was about five months, during which time we had written letter after letter after letter.

Q Had you written to Mr. Detmer again in February with respect to this matter?

A Yes, sir.

Q Did you, on February 17th, write Mr. Detmer asking him for photographs of the Slattery car in the alleged damaged condition so that you would be able to evaluate the extent of your possible liability?

A Yes, sir.

Q I show you a document and ask if that is a copy from your file of the letter which you sent to Mr. Detmer?

A Yes, is, it is.

Mr. Kiel: I ask that that be marked for identification, please.

Exam. Reilly: Marked for identiciation as Exhibit 251.

(Respondent's Exhibit No.251,
Witness Zola, was marked
for identification.)

Q Exhibit 251 refers to a communication of February 2, 1972 received from the American States Insurance Company. Is this the letter, together with the attachments, that you received from the American States Insurance Company?

A Yes, sir.

Mr. Kiel: May I substitute a copy for the original?

Exam. Reilly: Yes.

Mr. Kiel: And ask that it be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 252.

(Respondent's Exhibit No.252,
Witness Zola, was marked
for identification.)

Q Did you analyze the document which is Exhibit 252?

A Yes, sir.

Q What were your conclusions with respect to settlement of the claim based on information that you had received in that letter?

A We were astounded at the enclosure in the letter in several respects, and it was our belief, after reviewing the file, that the reason for the delay in presenting this material which --

Mr. Browning: I object. He is going beyond the scope of the question.

Mr. Kiel: Mr. Examiner, this is the basis of his reasonable action with respect to the handling of claims, and I submit if he can not explain his position, then we are not going to be able to put in our evidence.

Exam. Reilly: He is stating his opinion before he states the basis on which that opinion is founded. It seems to me he is doing it backwards.

Q Did you examine all of the documentation and the letter of February 2nd, received from the American States Insurance Company?

A Yes, sir.

Q In connection with this Slattery matter?

A Yes, sir.

Q Based on that, did you arrive at an opinion or a conclusion?

A Yes, sir.

Q Would you tell us what that is?

Mr. Browning: Mr. Examiner, I object since we can look at this and draw our own conclusions, the Commission may draw its own conclusion.

Mr. Kiel: The question is what our actions were or were not, and what they were based on.

Exam. Reilly: I still don't know what they are based on. I have to go through here and pick out and conform my mind to his mind. I don't know what his opinion is based on.

Mr. Kiel: Will you explain what your opinion is based on and what your opinion is?

A Yes. I would like to have substituted for the review of the Examiner, the original of Exhibit 252 for the reason that it shows clearly the photographs which have been reproduced from it and which are not as clear in the reproduction, which I think are very important in this matter.

Q These photographs --

A This is the original as submitted by the insurance company.

Mr. Kiel: It is also available to all of counsel during this examination.

Q Would you continue, please?

A We noticed that despite the fact that the claim asserted by Mr. Slattery's insurance company, and apparently asserted to them by Mr. Slattery, was for some $852, the pictures of the alleged damage to the vehicle could not have exceeded in reasonable repair an amount of about $180 to $220, according to our adjuster's review. Moreover, these damages occurred in the same areas as indicated prior damage on our bill of lading, and collaborated the fact that no accident report has been filed by Mr. Slattery or anybody else with any police department concerning the damage. Moreover, in reviewing the substantiating -- the alleged substantiating papers sent in by the insurance company after some five months of delay, we find a statement on the page entitled "Automobile damage condition report," showing the estimator under special comments signed by Bob Hassik, adjustor of the Cleveland branch.

Q That's the fourth paper from the top of the file?

A Indicating an inspection date of 11/17/70 and a date contacted of 9/14/70: "Front tires are worn out from misalignment, insured wants new tires, but I told insured to go after Aaacon Auto Transport." It says one was cut in accident under it.

It is our conclusion based on this file that the amount of the damage alleged by Mr. Slattery to his insurance company was unsubstantiated and our further conclusion that there was overreaching, and our final conclusion that Mr. Slattery's insurance company was loath to supply us with this material for the reason that it was clear to them--

Mr. Browning: I object, Mr. Examiner. He is going in the realm of speculation again.

Exam. Reilly: Okay.

Q With respect to this feeling that the insurance company was not presenting their claim as might be anticipated in such a matter, did you write the insurance company on February 25th, 1970, with respect to this matter?

A Yes, sir.

Q What did you request in your letter?

A In light of the photographs presented to us, and the fact that the estimates submitted indicated that partas had--that is to say, parts of the outer body of the car had to be replaced in large quantity, which was way beyond what the photographs indicated, that is to say, the left front where there had been no break in the material, the metal material, was indicated instead of being straightened, as being replaced. The same holds true for the left rear fender and the items such as bumpers, deck lid, et cetera. We requested that the insurance company make the car available to an adjustor of ours in Cleveland so we could ascertain whether or not, in fact, these parts that were alleged to have needed replacement were replaced or merely straightened. If they had been replaced there would have been welding marks, which any adjustor could easily see. We stated they could, at any time, bring it to our office there and we would have an adjustor go out to any place where the car was.

Q Have you heard from them any more with respect to their claims?

A No, sir.

Mr. Browning: May I inquire of counsel whether he is going to produce that letter?

Mr. Kiel: We have the letter. I just don't have enough copies. If I may, I will read it in the way your witness did, or I will give it to the reporter, have it marked, and I have one copy which we will take out and duplicate during the recess.

However it meets your convenience to do.

Mr. Browning: Could I see it?

Mr. Kiel: Surely.

May the record show that the witness has indicated he is replacing the copy which is marked Exhibit 252 with the original.

Mr. Browning: I think we ought to have this in evidence. How many copies do you need?

Mr. Kiel: One copy and I will make up five or six more.

Exam. Reilly: Marked Exhibit 253.

(Respondent's Exhibit No.253, Witness Zola, was marked for identification.)

Q With respect to this shipment, did your company check the driver's reference as is done by your company in moving--

automobiles?

A Yes, sir.

Q In connection with the processing of a file, does your company have a form on which all telephone conversations are recorded in -- a synopsis of them at least, are recorded with the dates?

A Yes, sir.

Q Mr. Slattery indicated when he called your office attempting to locate the car he got different information each time he called. Under the procedures in your claims department, would that be possible?

A It is -- let me say that anything is possible. It is highly unlikely. If I may add, what makes it unlikely is the fact that the synopsis is available to everybody that handles a claim, so that they would have that in front of them while they were speaking to him, and unless someone was just not functioning, he would, on each occasion, be speaking to someone who at least had a familiarity with the outline of his claim.

Q With respect to Mr. Slattery's testimony, he indicated that he had written your company with respect to his measure of damages and had no response to such claim. Does your file show any situation where you have not responded to Mr. Slattery?

A No, sir. We have extensive correspondence with him, and in that regard with regard to his letter, his assertion that he didn't receive our material and did receive our correspondence, I have the letter of December 8th, filled out by Mr. Slattery himself, which was returned to us finally by his insurance company, as I testified to earlier, and this is the letter that he had testified that he never received.

Mr. Browning: Just a minute. Mr. Examiner, again the best evidence in this case is a letter.

Exam. Reilly: It is a very simple form. I think the form is in the record a dozen times. I think it would satisfiy you if you looked at it.

Mr. Browning: All right. May I look at it?

Mr. Kiel: Yes, certainly. (Handing)

The Witness: Mr. Browning, you will notice that there is more of a list on the back which Mr. Slattery asserted.

Mr. Browning: I think there has been a mischaracterization of the testimony of the witness, witness Slattery. Mr. Kiel said he didn't say -- Mr. Kiel said that witness Slattery testified that he had never received this letter.

Mr. Kiel: Mr. Kiel did not testify.

Exam. Reilly: I think Mr. Kiel's statement went beyond that. I think it was he didn't receive any letters. My understanding was this was offered to show that he, at least, received this one.

Mr. Browning: May I have a second, Mr. Examiner?

Exam. Reilly: Yes, certainly.

Mr. Kiel: May I ask that that December 8th letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 254.

(Respondent's Exhibit No.254, Witness Zola, was marked for identification.)

Q May we refer next to the testimony of the witness Browder? This situation involved what type of a problem?

A This situation involved damage to an automobile which we were transporting as the result of a steering defect in the vehicle.

Q Was this a situation where one or more than one driver was involved?

A We had to use two drivers on this car because it was not in good condition and had broken down in the course of the transportation, and the entire insidesof the car were replaced -- had to be replaced by Mr. Browder, and I believe that was done -- yes, it was done in Nevada.

Q After the repairs were made, did Aaacon dispatch another driver to continue the transportation of that vehicle?

A Yes, sir.

Q What happened when the second driver was transporting it?

A This is the driver who experienced difficulties with the steering mechanism --

Mr. Browning: I object to that unless he lays a foundation for that testimony. This is gross hearsay.

Mr. Kiel: Mr. Examiner, gross hearsay is what this evidence of these witnesses for the Bureau have been engaged in. In fact, we had a witness who testified --

Mr. Browning: This is not firsthand knowledge, Mr. Examiner.

Mr. Kiel: I will withdraw the question.

Q Mr. Zola, have you completely investigated this situation with respect to Mr. Browder and his work?

A Yes.

Q Are you familiar with all of the details?

A Yes, sir.

Q Would you explain briefly the type of investigation you undertook in this matter?

A In this matter, we -- the car, after it experienced the second difficulty, was brought into a garage in Ely, Nevada, called Birch Brothers Garage.

Mr. Browning: Excuse me, Mr. Examiner. He is not being responsive to the question.

Mr. Kiel: I think he is going to answer it now. He is explaining where the car was and what he did in his investigation.

A At that time we had telephone conversations with Mr. rowder and with Birch Brothers Garage, and we asked them in light of the information made available to us to examine the vehicle, which they did, and they sent us a report on that examination.

Q You have documents with respect to that matter?

A Yes, sir. Do you want all of them?

Q All of them.

A All right, I will put them in order.

Q Did a representative of your company have a conversation with Birch Brothers?

A Yes, sir.

Q With respect to the inspection of the automobile of Mr. Browder?

A Yes, sir.

Q Was a letter written to Wallace Birch of Birch Brothers requesting inspection of the 1966 Volkswagen?

A Yes, sir.

Q Is this a copy of a letter which appears in your file?

A Yes.

Mr. Kiel: I ask that the letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 255.

(Respondent's Exhibit No.255,
Witness Zola, was marked
for identification.)

Q Did you receive a letter from Mr. Birch dated September 25, 1970?

A   Yes, sir.

Q   I show you a letter signed by Wallace Birch and ask you if that's the letter that you received?

A   It is.

Q   Were there pictures sent to you with that letter?

A   Yes.

Q   Are they attached to this letter now?

A   No.

Mr. Kiel: May I ask that the letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 256.

(Respondent's Exhibit No. 256,
Witness Zola, was
marked for identification.)

Q   Do you have the two pictures which -- not the two pictures, the pictures which were sent to you by Birch Brothers?

A   I believe so. I would have to pull out our file, which I didn't do.

Q   In any event, was your determination as to the cause of the accident influenced by the advise from Birch Brothers in Exhibit 256?

A   Yes, and their telephone conversations, which that summarizes.

Q   Did you receive a communication from Mr. Browder subsequent to the receipt of the communication from Birch

Brothers with respect to his claim for damages?

A   Yes, sir.

Q   I show you a letter of October 3, 1970, and ask if that is a copy of the response which is in your file?

A   Yes, sir.

Mr. Kiel: May I ask that that letter be marked for identification?

Mr. Reilly: Marked for identification as Exhibit 257.

(Respondent's Exhibit No. 257, Witness Zola, was marked for identification.)

Q   Was Exhibit 257 the method by which you notified Mr. Browder that you disclaimed liability for the loss suffered by him?

A   That was a written form of it. We had had extensive telephone conversations with him throughout the entire period of time and he was notified by phone as well as the letter.

Q   Did Mr. Browder have an attorney?

A   Yes, sir, Mr. Giorgio.

Q   Were you in contact with him with respect to this matter?

A   Yes, sir.

Q   Did you advise Mr. Browder and/or Mr. Giorgio with respect to what you thought they should do to secure salvage or to repair the vehicle?

A Yes, sir.

Q What did you advise them?

A We advised Mr. Giorgio and Mr. Browder, Mr. Giorgio by letter, Mr. Browder on the phone many times, to try and obtain the salvage value of the vehicle in the event that he was not going to repair it, so at least there would be some mitigation of damages, and this went on and on over a period of time in which Mr. Browder just did not do it. He just refused to participate in any way in the salvage -- in getting any mitigation.

Mr. Browning: I object to this line of questioning, on the grounds that again there's no -- we don't have the best evidence here. He is referring to communications and we ought to have them here. The only one we have is 257.

Mr. Kiel: I have a whole sheaf that are coming. The witness can testify about what he knows, the information that he has. He is under oath.

Mr. Browning: Why doesn't he just testify, Mr. Examiner, as to what documents he submitted?

The Witness: There's more than one document.

Mr. Browning: And have them marked for identification.

Mr. Kiel: I would like the courtesy of presenting the evidence, Mr. Examiner, as I think it should be, and I think that the testimony is proper.

Exam. Reilly: Your objection is overruled. Go ahead.

Q Did Mr. Giorgio ever indicate to you whether or not he intended to institute action, legal action against your company for the alleged loss that his client was caused?

A Yes, sir.

Q Was that ever done?

A No, sir.

Q Now, did you receive a letter from Mr. Wallace Birch of Birch Brothers, indicating that the vehicle was in his custody and he wanted you to do something?

A Yes, he was trying to get the matter off dead center.

Q I show you a letter dated December 2, is it '70, from Wallace Birch and ask you if that's the letter you received?

A Yes.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as 258.

(Respondent's Exhibit No.258, Witness Zola, was marked for identification.)

Exam. Reilly: We will take a ten minute recess.

(Recess taken)

Exam. Reilly: On the record.

Are you ready, Mr. Kiel?

Mr. Kiel: Yes, sir.

Q How did you get a copy of Exhibit 258, the letter addressed to Mr. Browder, do you remember?

A That copy was sent to us.

Q Did you, after you received that, have your company contact Mr. Browder to suggest that he get in touch with Birch Brothers to recover salvage value?

A Yes, sir.

Q Is this a copy of the letter in your file?

A Yes.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 259.

(Respondent's Exhibit No.259, Witness Zola, was marked for identification.)

Q Did you have a representative of your company thereafter contact Birch Brothers by phone and request details with respect to the salvage value of this automobile to assist in the solution of this problem?

A Yes. Since Mr. Browder indicated to us that he wasn't going ahead with it and his attorney did likewise, we thought maybe if we could start the ball rolling, they might, at some point, pick up and try and get some money back.

Q Did you get a letter from Birch Brothers dated December 12th, giving you their statement of the salvage value less the charge accrued against the automobile?

A By that date, yes, sir.

Mr. Kiel: I ask that a copy of that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 260.

(Respondent's Exhibit No.260, Witness Zola, was marked for identification.)

Q After you received the letter of December 12th, 1970, from Birch Brothers, did you write and call Mr. Browder and discuss with him the question of securing salvage value for the vehicle?

A Yes, sir.

Q I show you a copy of a letter and ask you if this is a copy of a letter from your file?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

(Respondent's Exhibit No. 261, Witness Zola, was marked for identification.)

Exam. Reilly: Marked for identification as Exhibit 261.

Q After writing the letter which is Exhibit 261, did you then write to Birch Brothers with respect to the disposition of the car and who would take care of salvage?

A Yes, at that time we had spoken to Mr. Browder and his attorney, and it seemed at that time that they were going to go ahead and make some attempt to get the salvage value.

Q I show you a copy of a letter, and is this the copy of the letter that you wrote to Birch Brothers from your file?

A Yes.

Mr. Kiel: I ask that that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 262.

(Respondent's Exhibit No.262, Witness Zola, was marked for identification.)

Q Mr. Zola, did you hear the testimony of Mr. Browder and sense his indignation with respect to the fact that he wasn't receiving any response, that you weren't communicating with him?

A Yes, sir.

Q Prior to that testimony, had you any opinion as to the relationship that you had with Mr. Browder, all be it, that he was a claimant or that his car had been damaged?

A Yes. Our opinion was that from our conversations and from our correspondence, that although he was a claimant, he had no question whatsoever about the method of our handling his claim.

Q I show you a handwritten note dated December 18,1970, which begins with the word "Hi," what is that?

A This is after the result of several of the initial phone conversations between Mr. Browder and our claims department, on a very cordial basis we had asked for the shipping documents in his possession, and I think the letter indicates just by the tenor of it the relatively amicable relations that existed between us despite the fact that he had a claim.

Q And with respect to this document, is it a letter you-received from him?

A Yes, it is.

Mr. Kiel: May I have that marked for identification?

Exam. Reilly: Marked for identification as Exhibit 263.

(Respondent's Exhibit No.263, Witness Zola, was marked for identification.)

The Witness: Mr. Kiel, in further answer to the question of our opinion about the nature of Mr. Browder's feelings about the way his claim was being processed, on December 15th, we provided Mr. Browder and his attorney with a copy of our insurance certificate so that if there were any further questions, he could file a claim directly with our cargo carrier, which was never filed, and moreover, prior to that time, we had been specific with him about the basis of the declination of the claim and he wrote to Birch Brothers Garage and a copy was sent to us, and that's one of the exhibits of the Commission, and at no time did he even see fit to question them about the conclusion that they reached regarding their examination of the vehicle and the fact that the steering defect caused the problem, and my feeling was all along in this matter, that other than the salvage question, Mr. Browder was satisfied, until I heard him in this proceeding last October.

Q After you received the letter of September 18th from Mr. Browder, is your letter which is Exhibit 257, dated

October 3, 1970, a response and a declination of his claim?

A Yes, sir.

Q As a matter of fact, did Mr. Browder ever make a specific claim in writing, setting forth a monetary amount which he claimed from you?

A No, sir, never at any time.

Q By the way, when the car in question was transported, it was in the latter part of 1970, is that correct?

A Yes, sir.

Q Was it a 1966 Volkswagen?

A Yes, sir.

Q In that connection, where was that car picked up?

A In the San Francisco area, I believe. If you will just bear with me for a moment, I will be specific. The car was picked up in Stamford, California.

Q With respect to the drivers of the Browder car, can you tell us, had any of them, or the two of them, ever been used by Aaacon?

A Yes, sir.

Q Was it the first or the second?

A The first driver had driven for us before.

Q Or is that the second driver?

A I think, Mr. Kiel, off the record please, I left my papers on the second driver in the file I gave you on Browder. I am sorry.

Q I don't have it.

A If you just bear with me, I will find it.

Q Whether it was the first driver or not, was one of the drivers previously used by Aaacon?

A Yes.

Q And the other driver, had he ever worked for any automobile transport company in a similar capacity?

A Yes, he had.

Q For whom, if you know?

A I would want to check my records to give you the exact answer. I'm not sure.

Q In any event, were you satisfied when you reviewed the file that these drivers were both reliable and qualified drivers?

A Yes, sir.

Q Do you have the rest of the papers now?

A The first driver had driven for another company before. Both drivers had driven for our company before.

Q Would you turn next to the claim of Levy. Before we do that, just one moment. Let me just double check.

Will you turn to the claim of one Levy and the testimony of an attorney by the name of Gearhart Petzell.

Did you hear the testimony of Attorney Petzell who testified in connection with the Levy matter?

A Yes, sir.

Q Are you familiar with the circumstances and situations which occurred in that situation?

A Yes, sir.

Q Were you intricately involved for your company in that matter as it was occuring?

A Yes, sir.

Q Did you see the police report of the accident that occurred in South Carolina in connection with the motor vehicle of John Levy?

A Yes, sir.

Q Did you secure the police report concerning the accident?

A Yes, we did.

Q Were one or both of the cars involved in the accident cited by the police?

A Yes, they were.

Q Are you familiar with the lien of attachment that was placed on the automobile of Mr. Levy by virtue of the fact that it was an out of state car and it was a question of financial responsibility?

A Yes, sir.

Q What did you do as soon as you found out about the attachment?

A We notified our insurance company, the Home Insurance Company, who is our liability carrier.

Q Did you speak with Mr. Petzall about it at that time?

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Q A third company did that?

A Mr. Kelly, through his attorney, arranged to have it done in South Carolina. We do not know that because we were informed by Home Insurance Company if we took any action inconsistent with the position they were assuming in the suit, that they would not defend us in this matter and we would be, in effect, assuming responsibility for the same.

Q Did you advise your insurance company with respect to your position and your responsibility as you saw it?

A In no uncertain terms in writing.

Q What did you tell them?

A We told it was their obligation as our insurer pursuant to the policy they issued to us to protect [illegible] [illegible] [illegible] with regard to a third party claim that was asserted against us.

I will say that this was fairly in the middle of my research on the question of primary and secondary liability with regard to third party insurance companies, and that was our feeling, and that's the feeling that we have asserted throughout this matter.

Q Did you make any offer to pay the [illegible] for the damage [illegible] to the automobile which occurred as a result of the accident?

A Yes, there was no question about that. We had informed Mr. [illegible] and Mr. Kelly that we stood ready to pay those repairs from the time that the accident occurred. There was no question about the fact that it was our responsibility.

Q Was your offer accepted?

A No, sir.

Q Why, if you know?

A Mr. Petzall wrote to us and he sent a copy to the Interstate Commerce Commission and said that he could not permit us to repair the vehicle. His exact language is we would not permit you to pay for the repair of Mr. Levy's vehicle without a determination by you that you will defend the lawsuit which is now pending in South Carolina. He then went on to indicate that he wasn't releasing, by that letter, his insurance company and the fact that his insurance company had led us both down the garden path in terms of time. This wasn't just one or two days. We were informed by Firemans Fund as was Mr. Petzall, that they were going to get the lien released and it wasn't until about six weeks later that we found out that they had done nothing.

Q In connection with the attachment and third party responsibility, did you write to your insurer?

A Yes, sir.

Q On January 5, 1978, to confirm your conversation with your insurer as to your position in the matter?

A Yes, sir.

Q I show you that letter of January 5th and ask if it is a copy of a letter in your file?

A Yes, it is.

Mr. Kiel: I ask that that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 264.

(Respondent's Exhibit No. 264
Witness Zola, was marked
for identification.)

Q Did you thereafter write and notify Mr. Petzall on February 25th of your assumption of responsibility to transport the car as soon as it had been repaired?

A Yes, sir.

Mr. Kiel: I ask that a copy of the letter of February 25th, be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 265.

(Respondent's Exhibit No. 265,
Witness Zola, was marked
for identification.)

Q Thereafter, did the matter proceed to litigation?

A It did.

Q During the litigation, did you receive certain documents and papers from your insurer which you were urged to execute in connection with that litigation?

A Yes, with regard to the litigation in South Carolina.

Q I show you a letter dated September 21, 1970, to your insurance company, the Home Insurance Company, and ask if this is a letter you sent to them and this is a copy of what was in your file?

A Yes, sir.

Mr. Kiel: May I have that marked for identification.

Exam. Reilly: Marked for identification as Eshibit 266.

(Respondent's Exhibit No.266, Witness Zola, was marked for identification.)

Q Would you briefly explain why you felt it necessary at the time to write this letter?

A Yes. The Home Insurance Company had submitted to me an affidavit for execution in the South Carolina matter with regard to our connection with the driver, and we made it -- we felt that the implication of that affidavit, which they had prepared, was the driver's actions were not the responsibility of Aaacon, and I refused to sign that affidavit, although Mr. Allen -- Mr. Allen of the Home Insurance Company called me up and stated that they were going to withdraw their defense of the action unless I did exactly as I was told, and I felt that if I stated that, it would be a misstatement of what I understood the law to be, and I contacted Mr. Seymour Alpert of the Interstate Motor Carriers Agency, which is our insurance agent, and he is an attorney as well, and deals exclusively in the area of carrier insurance, and he suggested that I better put on the record for my protection and the protection of our company, our position, which was that although the driver may be an independent contractor and not an employee of our company for Workmens Compensation purposes, that Aaacon is responsible for any action that he does and any damages resulting from the transportation of a vehicle that he undertakes on our behalf.

Q Is this third party liability action, was that started by the person with whom the automobile of Mr. Levy collided in South Carolina?

A Yes, sir.

Q Has that action been pending for some time in South Carolina?

A Yes, but as to Aaacon, it has been dismissed, I believe on the grounds that we were not -- again, that we were not the party primarily responsible, that as between us -- as between our liability insurance carrier and Mr. Levy's liability insurance carrier and that car owner's carrier is primarily.

Q Was the defense of that action and your participation in that action wholly within the control and jurisdiction of the attorneys for the Home Insurance Company?

A Yes, sir.

Q Is there another action pending by Mr. Petzall in another jurisdiction in connection with that?

A Yes, there is.

Q What does that relate to?

A Mr. Petzall, on behalf of Mr. Levy, brought an action against Aaacon in the State of Missouri for the damage to the vehicle, the physical damage to Mr. Levy's vehicle as well as to his alleged damages as a result of having to defend the action in South Carolina, and in that action we - he, as I say, we have asserted a position that as far as we are concerned, vis-a-vis our insurance company, they have an obligation to the public whose cars we are transporting and in that action we have sued the Home Insurance Company, as a third party Defendant to make sure that they pay any claims for which they are responsible.

Q In that connection, sir, did you attempt to secure arbitration of the facts relating to the damage to Mr. Levy's vehicle?

A Yes, in as much as it was clear that the damage was of a given amount and we did not dispute it, and the repairs has been made and paid for, and in as much as we acknowledged our liability from the beginning, we felt that as to that portion of the case, a similar arbitration declaring our liability and permitting us to pay that and get rid of that issue would be the fastest way to eliminate that part of the case from the other part of the case which dealt with relative liability of Car Owners and Car Carriers Liability Insurance Company for the claims of third parties.

Q In that connection, did you secure such an order directing arbitration?

A Yes, sir.

Q Did the court in Missouri react in any way to dispose of its jurisdiction or give up its jurisdiction of action?

A We never sought to have the court in Missouri to give up its jurisdiction. We merely sought to have arbitrated in New York pending the litigation in the Missouri-- the question relating to the damages to Mr. Levy's automobile, and the court in Missouri did not -- wasn't called upon to give up jurisdiction, so that issue was never raised.

Q Presently does the court in Missouri have this matter before it?

A It had it before it when it started, and it still has it before it.

Q Has some period of time expired?

A A long period of time has expired.

Q In your opinion, if that matter had gone to arbitration, could it have been disposed of previously?

A In my experience, it would have been disposed of in approximately a month and a half after the arbitration proceedings were commenced.

Q Now, insofar as your company is concerned, do they pay premiums to the Home Insurance and Home Indemnities Company for the insurance that they carry on your company?

A Yes, as well as on the liability insurance companies.

Q Do you expect them, and insist in fact, that they discharge their obligations to those persons who might have action against you?

A Yes, sir. Unfortunately, we can't control their position, but we have throughout as possible asserted it both by undertaking litigation against our own insurance company as well as refusing to go along with any action on their part which we felt were contrary to the concept of liability.

Q Do you know what the actual damage was to the Levy automobile?

A It was in the neighborhood of some $400.

Q Did you offer to pay that amount?

A It was $435, and we offered to pay it on many occasions.

Q What is the amount of the suit in Missouri by Levy?

A $54,300. I might add, that the South Carolina suit which is the only other possible damage in the Levy matter, possible area of exposure to Mr. Levy, was under a thousand dollars.

Q Mr. Zola, Mr. Petzall indicated that you took the position that your company was only responsible to Mr. Levy for excess coverage. Does your company ever make such, or do you ever make such a statement?

A No, sir.

Q Do you recall Mr. Petzall's comment with respect to that?

A Yes, I do.

Q Did you make such a statement?

A I did not.

Q Turning next to the shipper, Mr. Singpurwalla. Do you recall and are you familiar with the situation involving Mr. Singpurwalla and the movement of his automobile?

A Yes, sir.

Q When that car was received by your company for transport, was there indication of some body damage at the time?

A Yes, sir, there were scratches on the left front of the car, there was damage to the right front fender, the left body sill, the right front door and the left front fender.

Q When the automobile arrived, did Mr. Singpurwalla contact your office with respect to some dissatisfaction with respect to the condition of the car when it arrived?

A He contacted our Los Angeles office to place the office of origin of transportation.

Q Do you know what he was instructed to do or not to do?

A He was instructed not to pay the drivers, but to forward the final tariff to New York pursuant to what was the bill of lading provision at that time.

Q And he indicated to them that he was not going to do that, but was going to pay the drivers?

A Which he did.

Q Did he make any threat against your company at the time?

A Yes, we were advised by our Los Angeles office, to use their words, "that he was going to bathe Aaacon Auto Transport in bad publicity," by writing letters.

Q Did you actually start receiving letters?

A Oh, did he ever. Yes, he did.

Q Did he send the letters only to you?

A No, he sent it to the Interstate Commerce Commission and other agencies and individuals.

Q Do you have a copy of a letter from the Bureau of Operation to Mr. Singpurwalla dated April 15, 1970, from Mr. Tomany?

A Yes, sir.

Q Is this a copy of that letter that you received?

A Yes, sir.

Mr. Kiel: May I ask that that be marked for identifcation, please?

Exam. Reilly: Marked for identification as Exhibit 267.

(Respondent's Exhibit No.267, Witness Zola, was marked for identification.)

Q Does this letter indicate that the Bureau had some correspondence with Mr. Singpurwalla in connection with his letter writing campaign?

A This is the only letter of its kind we ever received from the Commission wherein they outlined to a correspondence, the number of correspondence they received and the replies of the carrier, this, by the way, only reflects what Mr. Sangpurwalla saw fit to send to the Interstate Commerce Commission. There were many other letters, maybe three times the amount of correspondence indicated here, of which the Commission was unaware.

Q Did you reply to his letters?

A Yes.

Q Did you receive them?

A Every one. Not only that, we replied to all the other agencies and individuals who wrote to us as a result of receiving letters from Mr. Sangpurwalla, and that's -- some of that is indicated in Mr. Tomany's letter.

Q Did your company ever receive a written claim from Mr. Singpurwalla with a stated amount of his dollar value of his claim against your company?

A No, sir.

Q Did you hear him testify that the only time he mentioned monetary damage in a communication to you was to set forth what he called a heuristic amount which he interpreted to be an arbitrary amount?

A Yes, sir.

Q Did you ever receive from Mr. Singpurwalla any information which would indicate that the automobile that was transported by your driver moved any specific number of miles so that you could determine whether the route of movement was, in fact, as he alleged, circuitous?

A No, sir.

Q Do you recall the testimony of Mr. Singpurwalla, that his vehicle was picked up in Anaheim, California?

A Yes, sir.

Q Have you determined the north latitude, degrees north laditude that Anaheim, California is?

A Yes, sir.

Q What is that?

A It is 33 degrees north latitude as shown in the Odessey World Atlas.

Q With respect to the destination of Washington, D.C., what is the north latitude of Washington D.C.?

A By the same, at least it is 39 degrees north latitude.

Q Mr. Singpurwalla testified, as I recall his testimony, that the vehicle was driven over a circuitous route because it went through Colorada, do you recall that testimony?

A Yes, sir.

Q What is the north latitude that goes through the center of Colorado?

A The center of Colorado is 39 degrees north latitude.

Q After the number of letters were written by Mr. Singpurwalla in 1969, did you hear anything further for a while?

A No, he was quiet until about March 30th of 1970, at which time the letter writing started again.

Q Did you receive a letter or a copy of a letter from Mr. Tomany thereafter on or about April 15, 1970?

A Yes, sir.

Q Was that to Mr. Singpurwalla, the original letter, was that to Mr. Singpurwalla?

A Yes, sir.

Q Is that Exhibit 267?

A It is.

Q With respect to the problem described by Mr. Singpurwalla as to tire damage or as he referred to it, a blow out, did you look into that matter?

A Yes, sir.

Q What was your conclusion?

A Well, he kept using the word a tire blow out. His testimony indicates he meant a ballooning of the tire. Under either case, our investigation didn't reveal any accident alleged by him or any collision with anything. We felt especially in the light of the age of the vehicle and its condition, that this was normal wear and tear which is expected from carrier liability pursuant to our tariff.

Q Was the driver used on this vehicle checked out before he was assigned?

A Yes, sir. And Mr. Singpurwalla had received and signed a copy of the bill of lading with the driver's

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

A He also wrote to those people.

Q -- Did you see and hear the testimony of Mr. Dorace, an earlier witness in this proceeding?

A Yes, sir.

Q Do you have a copy of the letter which your company received from Mr. Dorace dated March 13, 1970, which explained the situation which had occurred?

A Yes, sir. This was a summary of what had earlier been told to us in telephone conversations.

Q Had it been made known to Miss White?

A Yes, sir.

Mr. Hill: May I have this document marked for identification?

Exam. Kelly: Marked for identification as Exhibit 269.

(Respondent's Exhibit No. 269,
Witness Cole, was marked
for identification.)

Q Have you, in the course of your activities, familiarized yourself with the form of repair order used by most garages in the repairing of automobiles?

A Yes, sir.

Q Have you seen the form which the driver Dorace signed?

A Yes, sir.

Q Will you tell us whether or not that is a standard type form with the statement and blank space as set forth by the exhibit showing that document?

A That is the standard form as it appears in practically ever case, claim case I have ever seen. It appears in several exhibits tendered in this proceeding in other claims.

Q In your opinion, as a result of that signing of that form in blank, without the driver being aware of the contents, was the repair by the Sunland Motors proper?

A I think the repair was properly made, but I don't think it was properly authorized.

Q In any event, did your company have any connection with or participate in any way with the Sunland Motors in the cost of or price of the repair charge?

A We did not. We didn't know of the price charge. We didn't make five cents out of that.

Q Did you indicate at any time to Miss White or her attorney that you would assume responsibility for any excess charge if the repair charge was greater than that which would be made by some other company for the same job?

A Yes, it seemed that the sole issue that had developed in trying to get this car retransported was the fact that the engine had burned out, and we explained to Mrs. White and to her attorney, that the car was unmoveable without a new engine. I don't think anybody disputed that. So that the only question was whether or not she have effected a cheaper engine replacement than the one that was done. We, if she could do it, if she could give us any evidence that another Volkswagen dealer or responsible repair place would do it, we would pay that difference.

Q If she had made any such claim against you and you had paid it, would she have been out of pocket any amount as a result of the action of the driver?

A She would have been out of pocket nothing more than she would have been had she authorized the repair herself.

Q Did you indicate to Miss White whether or not you would transport her automobile to the ultimate destination when the vehicle was ready?

A By telephone and letter over and over. We tried to get this point across to her, but we could not get her cooperation.

Q Did you receive a request from any representative of the Commission with respect to the freight charges and the handling of the freight charges in as much as the vehicle never was transported by you to the original noted destination?

A Yes, Mr. Martin Campbell of the Commission contacted us, and requested that we make an adjustment of the tariff charges.

Q Did you do so?

A Yes, sir.

Q Did you indicate that to Mr. Tomany by your letter of October 12, 1970?

A Yes, sir.

Mr. Kiel: May I ask that that letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 270.

(Respondent's Exhibit No.270, Witness Zola, was marked for identification.)

Q Did Miss White indicate to you, at any time, that she had some information or belief that the driver had gone somewhere, perhaps, that you were not aware of?

A Yes, sir, she indicated to us that she believed the driver to have gone to Mexico and brought by contraband, whatever that was supposed to mean. That was her word, "contraband."

Q Was there any question by Mrs.White as to who the driver actually was?

A She said she doubted Mr. Sorace was the driver and that -- then she said"she hoped he would go straight in the future."

Q Was that material sent to you or called to your attention by Mr. Tomany?

A Yes, sir.

Q Did you reply to him with respect to those matters?

A Yes, sir.

Q I show you a letter of June 29, 1970, to Mr. Tomany, and ask if that is your reply?

A It is.

Mr. Kiel: May I ask that that document be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 271.

(Respondent's Exhibit No. 271, Witness Zola, was marked for identification.)

Q Did you write Miss White by the letter of July 15, 1970, indicating that you were refunding her -- or part of her transportation charge and also indicating the route of movement that the driver advised you that he took?

A Yes, sir.

Q Did you send that letter to Miss White?

A As well as to a lot of other people who she indicated she had written to.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 272.

(Respondent's Exhibit No.272, Witness Zola, was marked for identification.)

Q Did you hear the driver testify to the actual movement he took when he drove the car?

A Yes, sir.

Q Did you check to see the latitude of Los Angeles, California where the car originated?

A Yes, sir.

Q What is that?

A According to the Odessey World Atlas, it is 34 degrees north latitude.

Q Did you check to see what the latitude of Baltimore, Maryland was?

A Yes, it is 39 degrees north latitude according to the same authority.

Q Going through Reno, Nevada, as the driver indicated he intended to do, did you check the latitude of Reno?

A Yes, it is also 39 degrees north latitude.

Q Did you write Miss White with respect to your offer to continue the transportation when the car was in condition to be moved?

A On several occasions.

Q I show you a letter of January 2, 1970, on your company's letterhead, addressed to Miss White and ask if that is one of the occasions?

A That is one of many occasions.

Mr. Kiel: I ask that that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 273.

(Respondent's Exhibit No.273,
Witness Zola, was marked
for identification.)

Q Did Miss White, at some time, communicate with the Attorney General of Maryland, which office then contacted you with respect to the movement of her automobile?

A Yes, sir.

Q Did you respond to that agency's letter?

A Yes, sir.

Q I show you a communication and ask if that letter of May 25th is your response?

A Yes, sir.

Mr. Kiel: May I have that marked for identification, please?

Exam. Reilly: Marked for identification as Exhibit 274.

(Respondent's Exhibit No. 274, Witness Zola, was marked for identification.)

Q Had you been in touch with this same office previously when they asked for other information after receipt of a letter by them from Miss White?

A Yes, sir.

Q I show you your letter of April 10, 1970, to the same office, Consumer Protection Division of the Attorney General's office in Maryland, and ask if that is the reply that you sent to them in connection with the questions that Miss White had posed?

A Yes, with copies to the Interstate Commerce Commission, the Long, Clarence Long, the Better Business Bureau as well.

Mr. Kiel: I ask that the letter of April 10th be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 275.

(Respondent's Exhibit No.275,
Witness Zola, was marked
for identification.)

Q Prior to the continued letter writing, which was going on into April of 1970, did you, in March, 1970, reply to a letter of Miss White advising her about the driver and his physical condition and background?

A Yes, sir.

Mr. Kiel: May I ask that this letter of March 6, 1970 be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 276.

(Respondent's Exhibit No.276,
Witness Zola, was marked
for identification.)

Q On that same date, did you also write a letter to the Honorable Clarence Long, congressman of the United States Congress with respect to communications that Miss White had had with him concerning this matter?

A Yes, he asked us to please inform him of the circumstances surrounding the matter, which we did.

Q And the letter I hand you, is that a copy of your letter to him?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 277.

(Respondent's Exhibit No.277,
Witness Zola, was marked
for identification.)

Q Before this sheaf of letters was written in March and April, had you been in touch with Miss White with respect to matters which she continued to write about through April, 1970?

A Yes, sir.

Q In fact, did you, on January 2nd, write to Miss White with respect to the question of the authorization for the repairs?

A Yes, sir.

Q I show you a copy of that letter and ask if it is a letter that was so written?

A Yes, it is.

Mr. Kiel: I ask that that document be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 278.

(Respondent's Exhibit No.278,
Witness Zola, was marked
for identification.)

Q Miss White indicated that she had conversations or discussions and received correspondence from Ralph Zola in behalf of Aaacon, and Ralph Zola, on behalf of Zola and Zola, that there were different addresses on the letters. It would seem to be that she was dealing with the same person and there were different addresses on the letters, though she believed that the office of Aaacon and Zola and Zola were in the same building. Would you briefly indicate the background and explanation of that?

A Yes. The offices of Zola and Zola are in the same building, although on separate floors from the offices of Aaacon. Our law firm does work for Aaacon in which my brother and I, who are both attorneys, are principal share holders. We also do legal work for other clients. We try, wherever possible, to be consistent in approaching a claim. Some claims require the claimant to have a sense of the law involved. With regard to Mrs. White, we attempted to make clear to her that the law was --that where our responsibility was and where hers were. Unfortunately, and I say infortunately, it is our policy not to write letters both as attorneys and as principals of the company. That did occur on this occasion, which is not the normal course.

We normally use our legal status when making correspondence with attorneys or where there is an extremely important matter requiring the lay person to have a sense that they better do something, such as notify your insurance company, et cetera.

If I might note, that the practice of having attorneys within the company for which they perform service is quite common. I am familiar in New York with J. Robert Morris, the in-house counsel for Aetna Life and Casualty. I am familiar with others, but I won't put it in the record.

Q In January, 1970, was Miss White communicating to you through a Mr. Hammond, her attorney?

A Yes, she was.

Q I show you a copy of a letter from Zola and Zola to Mr. Hammond in connection with the White matter and ask if that is a copy of a letter sent to him in connection with this same matter?

A Yes, sir.

Mr. Kiel: I ask that that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 279.

(Respondent's Exhibit No.279, Witness Zola, was marked for identification.)

A In this letter we clearly pointed out to Mr. Hammond, who was an attorney, the undertaking by Aaacon to pay for the difference in the cost of any repairs they could prove reasonable and the cost of repairs which were being charged by the Volkswagen dealership where the car had been repaired. It reiterated our earlier offer to Miss White.

Q Did Miss White, at one time, also indicate that she had some feeling that the driver was expecting her to reimburse him in addition to the garage, for the repairs?

A Yes, sir.

Q I show you a letter to Miss White dated February 27, 1970, and ask you if that was an indication to her that the driver was not seeking reimbursement?

A Yes, sir.

Q Mr. Kiel: I ask that the copy of that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 280.

(Respondent's Exhibit No.280,
Witness Zola, was marked
for identification.)

Q At the same time, did you, in that letter, decline responsibility for the mechanical break down of her vehicle?

A Yes. There had been no indication sent to her--by her to us at any time prior to this or even subsequent that there was any carrier fault resulting in the fact that her engine suffered difficulties.

Q With respect to Mr. Sorace, do you have information whether or not he drove for you prior to this instance?

A He drove for us prior to this and subsequent to this instance.

Q Do you know whether or not Mr. Sorace ever spoke with Miss White's father in connection with the condition of the car and why he was where he was? Do you have any information about that?

A Yes, he reported to us that the only one he spoke to with regard to this car since Miss White wasn't available when the mechanical difficulties occurred, was her father. He spoke to her the first time and said that the car had to be towed. He provided the money, the car was towed, and in

AFTERNOON SESSION

1:45 o'clock p. m.

[illegible]: On the record.

CONTINUED DIRECT

Q (By Mr. Hall) Do you recall the testimony of a witness, Mr. Louis Burton, driving for one Hortense Whitney?

A Yes, sir.

Q When and how did your company learn of an accident which involved the Whitney automobile?

A On December 3, 1956, the Boston office of our company was informed by the Salt Lake City Police that the Whitney vehicle had been in an accident and that the driver had been taken to the Latter Day Saints Hospital in Salt Lake City with broken bones.

Q Did you speak with the -- did a representative of your company speak with the driver?

A Yes, sir, called him at the hospital.

Q Was any notification sent to your insurance company?

A Yes, we notified them on December 5th. We had received notice from the Boston office, I think, December 4th or December 5th.

Q Was the information given to the shipper?

A Yes, sir.

Q Did you receive a written communication from the driver of the vehicle?

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A Yes. We had discussed with him orally the circumstances surrounding the accident and we asked him to write us. He had difficulty because he had broken his writing arm.

Q Did you receive a handwritten note, which I show you?

A Yes, sir.

Q Is that a date on that?

A Yes, sir. No, there's no -- there are dates mentioned in it. There's no date on it.

Q Is there attached to your file a copy of the envelope that it came in?

A Yes.

Q What's the postmark date?

A November 3, 1969.

Mr. Kiel: May I ask that a photocopy of that letter that has been identified be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 281.

(Respondent's Exhibit No.281,
Witness Sola, was marked
for identification.)

Q Was this information that you received from the driver communicated to Mr. Jacobs, who, at that time, was already involved in the matter?

A Yes, sir.

Q I show you a copy of a letter dated November 20th, addressed to Mr. Jacobs by Mr. Russell. Is that a copy of a letter from your file written by your company to Mr.

Jacobs and sent to him?

A Yes, sir, after we had had several telephone conversations and prior correspondence, he wanted to know the exact report given by the driver, so we copied it and gave it to him.

Mr. Kiel: I ask that that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 282.

(Respondent's Exhibit No.282, Witness Zola, was marked for identification.)

Q During this period of time, had Mr. Jacobs information, to your knowledge, as to your insurance company?

A Yes, sir.

Q How do you know that?

A We had sent him a certificate of insurance which listed the name of our cargo and liability companies and in one of his correspondence with us, that is to say, a copy to -- it was the original that went to us with a copy to our cargo insurer, we rendered a copy of the certificate of insurance, he put his stamp on it, Lewis Jacobs, which I have in my file.

Q Was Mr. Jacobs informed in all respects concerning the accident as you knew it and as he requested such information?

A Yes, sir. In the following manner: We informed him orally and in writing of everything we knew. We made police investigations and he testified that he did, too, Generally, after the commencement of litigation, he proposed interrogatories to us, and these interrogatories were answered by our company, which is a normal course of events for pre trial discovery, and he had also contacted during the period after the commencement of his litigation, the Interstate Commerce Commission and the Attorney General's office of the State of Massachusetts. We replied to each of these bodies with regard to the inquiry of the facts and circumstances, and sent copies to Mr. Jacobs.

Q One of the things Mr. Jacobs indicated in his testimony was that you had never contacted him after an initial telephone call. What is your reply to that?

A Our records indicate we have copies of over 75 pages of correspondence with Mr. Jacobs and with persons who wrote on Mr. Jacobs' behalf with copies to Mr. Jacobs.

Q During the end of 1969 and the beginning of 1970, did you conduct an investigation into the claim of Mr. Jacobs?

A Yes, sir.

Q Do you know a person by the name of Bill Markell?

A Yes, sir.

Q Would you tell us who he is?

A He has been the manager of our Boston office, I think, for about four years. More than four years, I am corrected.

Q Do you recognize his handwriting?

A Oh, yes.

Q I show you a letter of January 6, 1970, signed by one Bill Markell, addressed to you on your company's letterhead. Do you recognize that?

A I do.

Q Is this a letter that was in your file?

A Yes, it was.

Mr. Kiel: I ask that a photocopy of that letter be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 283.

(Respondent's Exhibit No.283, Witness Zola, was marked for identification.)

Q Will you please describe the circumstances that lead up to the writing of this communication as you know them?

A Mr. Jacobs kept writing to different agencies claiming that we wouldn't tell him anything about the claim and he kept characterizing the claim as a "one car collision".

Q Was this after he started suit, all of this?

A Yes, much of it was. In other words, not only was the matter in litigation, but he was seeking by writing to these agencies to have the matter concluded by non litigation outside pressure.

Q Was that the basis for this communication?

A Yes, it was.

Q Now, Mr. Jacobs indicated that he was dissatisfied with the response in the interrogatories that were referred to him, by him, and recently by you. Do you remember that testimony?

A Yes, I do.

Q Did Mr. Jacobs, at any time, move for other or more specific, or definite answers in response to his interrogatories and the answers that you gave?

A No, he didn't, although he could have under Massachusetts law.

Q Do you have in your firm an attorney by the name of Michael G. Aimes?

A Yes, sir.

Q Was he connected with you in the handling of the Whitney claim that Mr. Jacobs was then involved in early in 1970?

A Yes, sir.

Q I show you a letter dated March 2, 1970, on the letterhead of Lewis Jacobs, Attorney at Law, addressed to Michael Aimes in connection with this matter and ask if you recognize this letter?

A I do.

Q Did your firm receive that letter?

A We did.

Mr. Kiel: May I ask that a copy of that letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 284.

(Respondent's Exhibit No.284,
Witness Zola, was marked
for identification.)

Q Would you tell us the circumstances surrounding this question of arbitration with Mr. Jacobs?

A Yes. At this time, Mr. Jacobs had commenced litigation and although he was somewhat obstreperous, we felt that the best way to deal with him initially would be to try and -- by telephone calls, see if we could come to some mutual agreement on the settlement of facts relating to the matter.

Mr. Browning: I move to strike the word obstreperous, Mr. Examiner.

Mr. Kiel: I agree.

Exam. Reilly: All right, it is stricken.

A And at that time we had commenced no action to enforce the arbitration provision, but merely had, I believe, had suggested it to him, and he wrote to us and said he wanted it in Boston. We told him at that time in response to this letter by telephone call that although it was to be in New York, pursuant to the agreement, his witness need not appear, he could just submit documentary evidence. But this occurred after the commencement of the litigation.

Q With respect to Mr. Jacobs, was he an easy person to work with?

Mr. Browning: I object to that.

Mr. Kiel: Strike that.

Q In any event, after this letter, which is Exhibit 284, was received, were steps taken to initiate arbitration while the case was still pending in the Massachusetts courts?

A Yes, sir.

Q What did Mr. Jacobs do then?

A He sought, at that point, to resist the arbitration.

Q Well, did he then indicate that he didn't want to arbitrate?

A Yes, he changed his mind and then refused the arbiration which he had previously agreed to.

Q Do you know why?

A I have no idea why. The only thing -- well, I won't speculate. He just refused. Let me say that I didn't --

Mr. Browning: I object. No question is pending, Mr. Examiner.

Q Do you have any opinion as to the reason why Mr. Jacobs indicated he didn't want to arbitrate?

Mr. Browning: I object to the question. There has been no foundation whatever.

Exam. Reilly: You withdrew that question once, Mr. Kiel.

Q Did Mr. Jacobs advise you orally or in writing that he didn't want to arbitrate?

A Orally.

Q Did he tell you the reason why?

A He indicated at that time that he thought he could do better, making us go through litigation rather than having it determined by arbitration, better for his client's recovery.

Q Did you thereafter receive a telephone call from the section insurance of the Interstate Commerce Commission with respect to this matter involving Attorney Jacobs in Boston?

A Yes, sir.

Q Did you speak with Mr.Schloer about it?

A Yes, sir.

Q Did you confirm in writing to him the general information you gave him during your telephone call?

A Yes, I did.

Q I show you a letter of May 15, 1970, addressed to Mr. Schloer and ask you if that is a copy of a letter from your file which was sent to Mr. Schloer?

A Yes, and copies were sent to Mr. Jacobs and the New York attorneys for the Whitneys.

Mr. Kiel: I ask that that be marked for identification, please.

Exam. Reilly: Marked for identification as Exhibit 285.

(Respondent's Exhibit No.285,
Witness Zola, was marked
for identification.)

Q Will you tell us, sir, did you receive any notification from any other attorneys in 1970 with respect to this litigation?

A Yes, in the summer of 1970, the firm of Friedman and Ackerton of Boston contacted us and notified us that they were taking over the litigation of this matter and the attorney who was in charge of it was a Mr. Kosol, and he called us up and said isn't there some way we can settle this matter, and in the course of our conversation we found out we had attended the same law school,and he was quite cordial, and he indicated that he was going to be in New York within the next three months and that he would contact me and make an appointment to set up a luncheon at the law school club and that perhaps we could dispose of it in an amicable manner. I agreed. And I put away the file waiting to hear from him.

Q Some months later were you contacted by anybody else from that firm of Friedman and Ackerton?

A Yes, Mr. Harvey Pies of that firm contacted me approximately three months later concerning the settlement of the case. I spelled out to him as I had earlier to Mr. Kosol, the facts as we understood them and he confirmed what Mr. Kosol had told me earlier, that neither he nor Mr. Kosol were familiar with the underlying facts and had been informed by Mr. Jacobs that there had been a collision and they assumed a collision with another vehicle.

Q Did Mr. Pies inform you, at that time, with respect to the residence or domicile of his client, Mrs. Whitney?

A Yes, he indicated that Mrs. Whitney now lived in the State of Washington and they were going to move in the Massachusetts courts to have the litigation dismissed so they could then bring litigation in the State of Washington where Mrs. Whitney was.

Q Do you know of an attorney one Donald J. Orkin?

A Yes, sir.

Q Who is he?

A He is an attorney that has represented our company in the State of Massachusetts for the last two and a half years.

Q Subsequent to your conversation with Mr. Pies on October 27, 1971, did you receive a letter from Mr. Orkin with respect to the Whitney matter?

A Yes, he, from time to time, informs us of the status of all litigation.

Q I show you a copy of a letter from Donald J. Orkin and ask you if that's a letter you received in connection with this matter, dated November 1, 1971, which is in your file?

A Yes, sir.

Mr. Kiel: I ask that a copy of that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 286.

(Respondent's Exhibit No. 286, Witness Zola, was marked for identification.)

Q Was the postponement of the matter secured at that time?

A Yes, sir. They had requested it and we consented to it.

Q What, if anything, took place between you and Mr. Pies at that time?

A At that time we had a discussion of the value of the vehicle, which I felt although there was a grave question of liability, the amount of monetary damages claimed by Mr. Jacobs was so far out of line from our understanding of the value of that car, that I felt that that was the first matter to be resolved.

Q What was the amount that they were seeking at that time?

A $5,000.

Q What did you find in your investigation was the fair value of the car?

A Our investigation, based on the national market reports at that time, was that the value of the car was between $575 and $875.

Q What is the national market report?

A That is what is commonly referred to as the Blue Book. It is the bible of all auto -- used auto car companies. It is a periodic publication, it comes out every two weeks, which gives the finance, wholesale-retail value of cars, the cost of operation and other information relating to it, et cetera, which is the basis on which cars are normally sold.

have had the original returned to the Reporter, Mr. [illegible], and I tender you a copy of the document which is [illegible]. It is in the [illegible] matter. I offer copies to the parties.

Q In support of this [illegible] involving the [illegible] estate, was a written claim for [illegible] damages filed by Mrs. [illegible] or by any other person in your behalf prior to the institution of litigation?

A No, sir.

Q Did you hear Mr. [illegible] testimony that he was still involved in [illegible] for Mrs. [illegible] in the disposition of this case?

A Yes, sir.

Q Based upon the information that you have received from [illegible], [illegible] and [illegible], do you have any understanding about that?

A Yes. He is no longer actively connected in any way with that litigation.

Q Mr. [illegible] testified at page [illegible] of the record that arbitration was an excellent method of settling claims. Can you tell us whether or not you agree with that?

A I do agree.

Q Would you turn now to the [illegible] matter.

Mr. [illegible]: Mr. Chairman, I would like to move to strike [illegible] the record, the [illegible] by the witness concerning whether or not Mr. Jacobs is still concerned with the litigation of the Whitney claim at this time on the grounds that it is hearsay, gross hearsay evidence.

Exam. Reilly: We have Mr. Jacobs statement under oath that he was and we will have to assess it in the light of both.

Mr. Browning: Yes.

Q Are you familiar with the movement of the automobile of one Mr. Louis Muller?

A Yes, sir.

Q Did you hear the witness testify that when the vehicle was enroute near Detroit, Michigan, that there was an accident and the car was repaired and the brakes were fixed?

A Yes, sir.

Q And it was again tendered to you for transportation?

A Yes, sir.

Q Sir, what did your investigation develop as to the next event that occurred that involved a claim against your company?

A An investigation developed after the first accident, which occurred as a result of faulty brakes. A second -- lightening struck twice. A second accident occurred, and this was with regard to a subsequent driver of the same vehicle assigned on a subsequent date, wherein a deer jumped out of the woods in front of the car and caused damage to the front of the vehicle.

Q When the vehicle was received for transit from Mr. Nadler, was there any record of any body damage to the car at that time?

A Yes, sir.

Q What do your records indicate?

A That the car had dents on the left rear panel and had scratches and damage in several places.

Q Did Mr. Nadler make a claim for a stated amount as a result of the second incident?

A Yes, sir.

Q What was that amount?

A $299.

Q Did you investigate the matter to determine, to your satisfaction, whether or not you would be liable?

A Yes, sir.

Q Did you write Mr. Nadler in connection with this an offer of settlement?

A Yes, sir.

Q I show you a letter or a copy of a letter dated January 7,1970, addressed to Mr. Nadler on your company's letterhead, and ask you if that would be such a letter?

A That is the letter.

Mr. Kiel: I ask that the copy be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 288.

(Respondent's Exhibit No.288,
Witness Zola, was marked
for identification.)

Q In investigating the claim which resulted in the writing of the letter which is Exhibit 288,did you check with respect to whether or not the accident would be considered,to be considered resulting from an act of God?

A Yes.

Q What did you do?

A We did reserach on the question.

Q Did you find a situation that was comparable?

A We found situations comparable in the law of transportation by rail.

Q Such as?

A Cows on the track and locust, and freezing, and acts of nature. That is, the definition that we found is that where damage occurs to cargo not resulting from the intrusion of human elements, but resulting from the intrusion of non human elements, it is considered an act of God.

Q In any event, were you certain that this case was or was not one which was or was not an act of God?

A Not, absolutely not.

Q Would you tell us then why you made this offer to settle the case?

A It was just an attempt to try and, if you will, to use an expression, dry as the baby. There was no disposit of law that I could find and it was a question of trying to make such adjustment on a compromise basis.

Q Did you receive from Mr. Nadler any information that he was accepting or declining your offer of settlement?

A. Mr. Nadler declined our offer of settlement.

Q Was there than correspondence between Mr. Nadler and the -- your district supervisor at the Interstate Commerce Commission office in New York?

A Yes, sir.

Q Were you favored with a copy of a letter which Mr. Tomany wrote to Mr. Nadler?

A Yes, sir.

Q Is that a copy of it?

A It is.

Mr. Kiel: May I ask that that be marked for identification, please?

Exam. Reilly: Marked for identification as Exhibit 289.

(Respondent's Exhibit No.289,
Witness Zola, was marked
for identification.)

Q In this case and in others, have you been assisted and helped by the representatives of the Commission in attempting to resolve problems of this nature?

A Yes, sir, we have found generally when there's a question on the part of the Commission, they send us the underlying complainants letter and suggest a period of time in which to respond, and if they are not satisfied with the response, if there are further questions raised, because a copy is also sent to the -- by the claimant, we correspond further until the matter is -- until the positions of the parties are understood and the matter is laid to rest on the basis of an agreement or a clear disagreement.

Q Do you attempt to supply such information as the Commission representative requests or require from time to time?

A Yes, sir.

Q What is the status of the claim of Mr. Nadler?

A Mr. Nadler's insurance company, the Reliance Insurance Company, has placed the matter in litigation, I think primarily to resolve some of the legal questions that have arisen.

Mr. Browning: I object to that. Mr. Examiner, I object to these gratuitous remarks by the witness which are not in response to any question.

Exam. Reilly: I sustain your objection. The witness does this all the time and I suggest that he attempt to refrain from doing it.

Q What is the status of the claim at the present time?

A They have commenced litigation and our company moved pursuant to the discovery loss of the State of New York, in which they brought the litigation, we attempted to examine the vehicle and the attendant report on the reapir of the vehicle by the insurance adjuster, and by the local repair place and the insurance company for Mr. Nadler has refused to make that available to us, and as a result we have had to seek court orders to make that documentation available to us. At the present time, the insurance company has a period of time within which yet to comply with those court orders, but to date, they have not provided us with any of the information which is required by law.

Q Will you tell us whether or not, as your legal defense, you allegedthat this occurred as an act of God?

A We did.

Q Hopefully there will be some adjudication of that question by a court of contempt jurisdiction?

A Yes, sir, that is our intent.

Q As I understand your testimony, this litigation and claim only relates to the deer hitting the car accident, is that correct, to the second of the two situations?

A No, it relates to both of them as well as it relates to the accident arising from the defective brakes. Again there we had sought the investigative reports and the indication of repair which we knew to be including material which would be favorable to our position, and we have not received it.

Q Do I understand then as far as Mr. Nadler was initially concerned, he claimed two hundred for the body damage, but when litigation was initiated it was for the body damage as well as the mechanical failure?

A No, it was all for body damage, but body damage resulting from the mechanical failure of the brakes,as well as body damage from the deer incident which we had denominated as an act of God.

Q At the conclusion of Mr. Nadler's testimony at the hearing, did he come over to you and speak to you unsolicited?

A Yes, sir.

Q What was the discussion, please?

A We had coffee together after the hearing and he had sat through the testimony of several persons prior to his, as well as subsequent, and he told me at that time that one would have to have the wisdom of Solomon to settle most of these claims and that he thought arbitration would be a good thing.

Q Next, sir, would you look at -- strike that. Next I would like to discuss with you the claim of one Irving Moross. Are you familiar with that matter?

A Yes, sir.

Q The records that I have indicates that the vehicle involved was a 1964 Buick transported by you in 1970, is that correct?

A Yes, sir.

Q In connection with that matter, do you know whether or not your company received a clean receipt from the consignee at destination?

A Yes, we did.

Q I show you a bill of lading agreement D6604 and ask you if that is the document which was involved in connection with the movement of the Moross vehicle?

A Yes, it, it was.

Q Does that document indicate that the vehicle was -- had any body damage when it was tendered to you?

A No, sir.

Q Does the document indicate that there was any body damage or other damage when it was accepted at destination?

A It indicates no damage at either time.

Q Is there a signature of Jeanne E. Moross, in the box for the consignee to sign under the words "Delivered in the above condition except as noted"?

A Yes, sir.

Q Is there any notation on this document by any one with respect to the condition?

A No notation of any condition.

MR. Kiel: May I ask that a copy of that document be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 290.

(Respondent's Exhibit No.290,
Witness Zola, was marked
for identification.)

Q Exhibit 290 shows a date under the word "delivered " of February 16, 1970. Was that the delivery date?

A Yes, sir.

Q After the delivery was completed, did you hear anything else from Mr. and Mrs. Moross?

A We heard nothing from either of the Morosses orally or in writing for a period of approximately two months. At that time Mr. Moross had received some parking tickets, the dates of which indicated that they were placed on the vehicle during the time the vehicle was in the possession of the driver, and at that time he asserted an additional claim besides the parking tickets. He first telephoned us about it and then he wrote us a letter.

Q When you were informed about the parking tickets and the amount of those tickets, did you make any representation to Mr. Moross about your responsibility to pay those tickets?

A We indicated that we were responsible for the tickets and we so paid them.

Q Did Mr. Moross assert to you that there was some damage to the vehicle?

A For the first time, yes.

Q Did you, in connection with your investigation of that, also make or contact the driver of the vehicle, one Pedro

Abella?

A Yes, sir. We had contacted him on the telephone at the time and we have subsequently contacted him to get a statement of collaboration in writing.

Q I show you a letter dated March 10, 1971, addressed to you and signed Pedro Abella, and ask you if that is a letter you received from Pedro Abella?

A Yes, except the letter should be dated March 10, 1972. That's the date that's on the letter, but it was received by us March 10th of this year.

Q Did you write to him on January 7, 1972?

A Yes, sir.

Mr. Kiel: I ask that a copy of that response be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 291.

(Respondent's Exhibit No.291, Witness Zola, was marked for identification.)

Mr. Browning: I object to any reference in this, Mr. Examiner, on the grounds that it is hearsay.

Mr. Kiel: So that I may respond on the record, Mr. Examiner, this type of evidence was brought in ad infinitum time by Mr. Browning. I have made the same objections. I doubt that there would be any --

Exam. Reilly: I am going to overrule the objection. The objection is overruled.

Mr. Browning: I understand -- do I understand, Mr. Examiner, that we should change the date on this letter?

Exam. Reilly: That was my understanding.

Mr. Kiel: I would appreciate that.

Mr. Johnson: May I ask a question, Mr. Examiner? The letter was received in the proponent's office dated 1971?

The Witness: Yes.

Mr. Johnson: We can't change it.

The Witness: That's the way it was received.

Exam. Reilly: It is obvious from the first paragraph that he could not answer in 1971 a letter that was writeen in 1972.

Mr. Browning: I see that now. Okay.

Q Did you hear the testimony of Mr. Moross when he testified in this proceeding with respect to the alleged damage and injury to his autombile?

A Yes, sir.

Q Did you contact Mr. Moross asking for details of the charges that he made in his testimony?

A Yes, sir.

Q Was this done orally or in writing?

A It was done in writing.

Q I show you a letter dated March 3, 1972, on your letterhead addressed to Mr. Moross at his office at Columbia Pictures, the company that he indicated he was an executive

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible]

you to verify either the fact that the damage did occur, that it was due to your action or those of your driver, or the amount or value of the cost of repair?

A   The only evidence that Mr. [illegible] ever presented and that was presented in a letter, and in our interview with the driver, was that the car had starter difficulties somewhere in the Carolinas and that the starter was repaired, and that this occasioned a delay on the part of the driver and the repairs were paid for by the [illegible] when the car was received without question, and other than that, the only other occasion we have had that there was any substantiation to the repairs was the testimony by Mr. [illegible] that the alleged repair bills and rental bills were with his wife in Florida, and that was the basis for us requesting the documentation from Mrs. [illegible] in Florida. We have had no substantiation in writing or otherwise of any of the claims of the [illegible].

Q   I refer you to Exhibit 33 in this proceeding, a letter to you dated April 30, 1976, and a statement on Page 2 to the effect that the cost of putting the car in running order again was in the "neighborhood of approximately $300". Do you recall that?

A   Yes, sir.

Q   As far as you are concerned, are you permitted under the decision of the Interstate Commerce Commission in 34010 to pay a claim made in that manner?

A The Commission has indicated that claims of approximately or around a dollar amount are not to be the basis of any voluntary payments on the part of a carrier.

Q Does your company assume responsibility for normal wear and tear as to tailpipes, tune-ups and the like?

A No, sir, these are specifically excluded by our tariff.

Q Would you turn next to the claim of one Gerald Bracken. Did you familiarize yourself in the usual course of your business, with Mr. Bracken's transportation and his problem?

A Yes, sir.

Q And did you see and hear Mr. Bracken while he testified in this proceeding?

A I did.

Q Did Mr. Bracken speak with you voluntarily without your request for him to do so, after he finished his testimony?

A Yes, sir.

Q Would you tell us briefly what that discussion concerned?

A It concerned the transportation of his vehicle on prior occasions by other driveaway companies and the difficulty he had experienced, and it concerned, as well as the nature and circumstances surrounding the damage which -- if I may-- what turned out to be damage to the window of his vehicle, which prior to that time we had some evidence was not damage, but was, in fact, a mechanical difficulty.

Q In any event, when the automobile was delivered, did you receive a signed receipt for the delivery from Mr. Bracken?

A Yes, sir.

Q Is this a copy of the bill of lading agreement D31823, signed by Mr. Bracken?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 294.

(Respondent's Exhibit No.294,
Witness Zola, was marked
for identification.)

Q Is there a notation on Exhibit 294 which reads or appears to read "Window repairs, G.F.B."?

A Yes.

Q And is there also a notation "Paid driver $43.72for," and that comes right above window repairs?

A Yes, sir.

Q Is there also written in on this document the word "Replaced" and it seems to be on the line where it says "LF window" and 43.47?

A Yes, sir.

Q Would there be some indication that there was some knowledge that something had occurred and that a window had been repaired?

A Yes, sir.

Q Did Mr. Bracken communicate with your company subsequent to April 5, 1970, the date shown on Exhibit 294 as being the delivery date?

A Yes, sir.

Q Do you know what that communication related to?

A Yes. He wanted reimbursement for the amount which you have indicated is on the bill of lading, which said amount was expended by driver in effecting a replacement of the window in question during the course of transport,which amount Mr. Bracken apparently voluntarily paid the driver when the car was tendered to him on destination.

Q What did you inform Mr. Bracken?

A When I informed him that the driver had rightfully repaired the window, that it was the driver's responsibility to do so since that is our company's responsibility to do so, since the damage had occurred while it was in our possession. However, his voluntary payment of that amount to the driver was beyond the scope of our agreement and, in fact, that money should have -- in an agreement between us and the driver, should have been born by the driver out of the final freight charges. We felt Mr. Bracken's voluntary payment was not our responsibility. That is to say, he was paying for something that was properly effected by an agent of our company at our expense initially.

Q In any event, did you hear anything further from Mr.

Bracken until he appeared at the hearing?

A No, sir.

Q Was there any indication from Mr. Bracken that he was dissatisfied with the handling of this matter?

A None.

Q After you heard and saw Mr. Bracken's testimony, what did you do?

A We felt that in light of the unusual circumstances, in light of the nature of the man and the fact that because perhaps he had been a little confused,becasue of his age, et cetera, that the best thing was to voluntarily pay the claim and hope to retain his good will, so we did so.

Q Did you communicate with Mr. Bracken in writing when you paid the claim?

A Yes, sir.

Q I show you a letter and ask if that's a copy of your letter in this matter to Mr. Bracken?

A Yes, sir.

Mr. Kiel: May I ask that that document be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 295.

(Respondent's Exhibit No.295,
Witness Zola, was marked
for identification.)

Q Will you turn next to the claim of one Benedict Harrington? Did your company transport an automobile for Mr.

Harrington in 1969, which was a 1964 Cadillac?

A Yes, sir.

Q Did you hear the testimony of Mr. Harrington with respect to that transportation and see the documents that he made available, and which were received in evidence in this proceeding?

A Yes, sir.

Q Did you speak with and hear the testimony of Mr. Guy Archer, the driver of that automobile?

A Yes, sir.

Q Did you make any investigation to determine what difficulties had been encountered in the operation of the vehicle?

A Yes, sir.

Q By Mr. Archer and what was the result of your investigation?

A Our investigation reveals that the automobile in connection, at the time it was picked up by us, had approximately 62,000 miles on it and was at the time 6 years old, that in the course of the transport a heater hose, that is a rubberized heater hose cracked and was replaced in the amount of $24.38. As to the claim of Mr. Harrington concerning additional mileage, our conversations with the driver revealed that no additional mileage beyond the reasonably direct route was encountered and Mr. Harrington had offered since the time it was transported no substantiation of his claim of additional mileage. The only claim for money that our company ever received was the May 15th letter of Mr. Harrington demarking $24.38, which he stated was the responsibility of Aaacon in accordance with the normal loss of legal liability due to any extra loss, in that regard he felt that that expense, to use his words, reverted to Aaacon based solely on the -- his unsubstantiated claim of mileage. He wrote to us again on June 5, 1969, and in that letter he made no further reference to any mechanical damage to the vehicle despite the fact that his earlier letter had indicated that the car was going to be checked up to see if there was any "permananet," damage.

We declined his claim on June 13th in a letter, indicating that pursuant to federal law and the uniform bill of lading, as well as our tariff provisions inherently effects-- and wear and tear claims were not the legal responsibility of our company.

On July 19th our company was contacted by the Interstate Commerce Commission, indicating that a complaint had been received from Mr. Harrington. On the day we received that letter, that is, the letter was -- the letter wad dated July 18th. It was received by us on July 23rd. We wrote to the Interstate Commerce Commission noting that the car had been received at destination without comment and that a clean bill of lading had been signed at destination by the consignee, that there was no substantiation by the car owner of any claims for excess milage and that the only claim was for a radiator heater hose, the expenditure for which, on the part of the driver, appeared to be proper. I might note that that expenditure was below the tariff amount of $25.

Q Did it appear necessary in order to operate the vehicle that there would have to be some connection between the radiator and the engine of the vehicle?

A Yes, sir.

Q Exhibit 54 was offered as a two page document, which Mr. Harrington indicated he received from your company at one time. I show you that document and ask if you will tell us what you are able to about that document, is it one document?

A No, sir, it is two documents.

Q Do you know how it got put together?

A I can only imagine that Mr. Harrington put it together, from two different documents.

Mr. Browning: I object to that.

The Witness: There's nothing to object to.

Mr. Kiel: I will agree to have it stricken unless I can tie it down.

Q Is page one of this document signed by someone?

A Yes, sir.

Q What's the name?

A A.C. Baker and it is a document that is sent out by the New York office of our company, and was sent to Mr. Harrington.

Q From what New York office address was this document mailed?

A From 147 West 42nd Street.

Q I am talking about page 1.

A 147 West 42nd Street, and I recognize this form as one that -- especially the pencil marks on it -- as those Mr. Harrington made when he returned a copy of this to us in the course of correspondence with us and the Interstate Commerce Commission.

Q Now, do you have that document here in the hearing room with the same circling?

A Yes, sir, this is the document in the hearing room which you have just given me. It was the actual one from our files forwarded to us from the Interstate Commerce Commission in the course of their inquiry and had been forwarded to them by Mr. Harrington.

Q Look at page 2. Is there a name, a signature on that?

A Yes.

Q What does that show?

A This is the second page of a document sent out by Auto Driveaway Company. It also has pencil marks from Mr.

Harrington.

Q Is Auto Driveway Company your agent in New York at West 34th Street?

A Yes, it is a separate operation at West 34th Street.

Q Is Page 2 of the exhibit one of the documents that your West 34th Street office sends out?

A Yes, it is.

Q Did Mr. Harrington send you page 2 of Exhibit 53 on another occasion with the underlying or the circling that's one page 1?

A Yes, sir.

Q I show you a document and ask if this is the document?

A This is the one that we received.

Mr. Kiel: Mr. Examiner, I don't propose to be the same papers in twice in this record, so if anybody would like to have this for examination, I have it. No sense in putting it in twice.

Q In the course of your attempt to resolve the problem with Mr. Harrington, did you exchange correspondence, part of which is already in the record, and certain of which is not in the record?

A Yes, sir.

Q Eventually, did this matter get to the attention of Mr. Tomany of the Interstate Commerce Commission and did he contact you and ask that you respond, and advise the complainant with respect to your disposition of this matter?

A Yes, sir.

Q Did you do so?

A We did.

Q I show you a copy of your letter of July 23, 1969, addressed to Mr. Harrington with a copy to Mr. Tomany, and ask if that's a copy of such a letter in your file which was sent to Mr. Harrington and Mr. Tomany?

A Yes, sir, it is.

Mr. Kiel: I ask that that be identified.

Exam. Reilly: Marked for identification as Exhibit 296.

(Respondent's Exhibit No. 296, Witness Zola, was marked for identification.)

Q With respect to the time element at the beginning of the journey, do you know when Mr. Archer, the driver, applied for the vehicle?

A Yes. He applied for the vehicle on April 30, 1969, and his application was processed at that time in part, and he was told to return prior to picking up the vehicle, and on May 6, 1969, which is what he did.

Q Since Mr. Archer testified at the hearing, have you heard from him or about him?

A Yes, sir.

Q Would you tell us, please, what that is?

A Last evening on WCBS radio, Mr. Archer was quoted, that

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

the driver to drive the car, as determined from listening to Mr. Harrington that he had, in his own experience, driven a thousand miles a day and that was the basis for his suspicions, that the driver having the car for the number of days that he did would have put on so many miles. It was our feeling that no part of the claim was proper, and I might note that with regard to the question of professional versus casual drivers, although I do not believe the claim asserted by Mr. Harrington was rightful, that that question has been eliminated by the provision of our bill of lading, and the tariff rule relating to the question of professional drivers which is reflected in the bill of lading provision.

Q Would you tell us whether after your investigation of the claim in the [illegible] matter you have drawn a conclusion and belief as to the validity of the claim and the information submitted to you?

Mr. [illegible]: I object. We have already been through the [illegible] matter. This is repetitious.

Mr. [illegible]: I submit, Mr. Examiner, we haven't covered that phase of the [illegible] matter.

Mr. [illegible]: We certainly did.

Exam. [illegible]: You are making it very difficult for the examiner, Mr. [illegible]. I have to read this record. I assume you have to read it sometime, too, and there should be certainly a concerted effort to keep related matter together in the record.

I am going to let the answer this time, but I am sure not going to permit it further.

Mr. Kiel: For all the balance of the witnesses whose testimony is reviewed after this is finished, I will attempt to get this question elicited with respect to each of them at the time that their testimony is reviewed by the witness.

A With regard to the Slattery matter, the conclusion that we reached is that Mr. Slattery had filed a claim with us that was not proper, and that he has filed a claim with his insurance company and had received payments from them based upon unsubstantiated claims and facts --

Mr. Browning: Mr. Examiner, I move that be struck. That's between the insurance company and Mr. Slattery. It's got no bearing in this proceeding at all. It's incompetent, irrelevant and immaterial.

Mr. Kiel: Mr. Examiner, the basis of this testimony is that we are attempting to indicate to the Commission upon what our actions or failure to act was based, and the question of whether our actions were just and reasonable or unjust and unreasonable must be testified based upon the information we had. I submit it is relevant and procedure under the circumstances.

Mr. Browning: He is testifying about the matter between the insurance company, the claim of Slattery with his insurance company and the payment of that question. That's not relevant here.

Mr. Kiel: The witness is testifying with respect to his mental beliefs which resulted in the actions taken by his company in processing this claim, which is one of the issues, whether the company, Aaacon, acted reasonably and justly in handling the claim.

Exam. Reilly: How does the information concerning what Mr. Slattery and the arrangements with his insurance enter into it? They were not privy to it.

Mr. Kiel: The insurance company, based upon their relationship with their insured, is now claiming over under their rights as subrogare against Aaacon, and the attention given to this matter by the carrier in making its determination of how it would handle this claim is of consequence.

Exam. Reilly: All right, I will let him answer the question.

A It is our feeling, based upon our correspondence with the insurance company, and their indication to us of Mr. Slattery's great desire to file a stolen car report in spite of the information which we had made available to him as to the location of the vehicle, that Mr. Slattery was seeking to do what the Commission in 340ICC has prescribed, that is to say, make a sale in this case through his insurance company which would be passed on to Aaacon in subrogation of the full value of his car. Additionally, in light of the tremendous length of time, which by our experience was most unusual, with regard to the assertion of the claims by his insurance company, it was our conclusion that his insurance company had realized that they had paid an exorbitant amount on this claim and had been euchred and we were a little too sharp with Mr. Slattery to do this with us, and they were reluctant to present this material to us.

Q I might note that with regard to the Slattery claim there is a question outstanding as to the -- as to the trunk contents claim which has been asserted by Mr. Slattery.

A Our liability therein is limited to $50. We note that Mr. Slattery has listed many items as allegedly included in his trunk after the car had arrived and after his claim was first paid, almost none of these items were noted on the original bill of lading, and none of them were valued, and this part of the claim has also been made through his insurance company in an amount in excess of our statuory liability.

As to the claim that was finally -- that is, the claim substantiation that was finally submitted by Mr. Slattery's insurance company, among the items that we found suspicious, was the wholesale replacement rather than the straightening of many parts of the vehicle, some of which the photographs have indicated were not damaged, others of which the photographs indicate had only minor damage to them, such as the bumpers, the face bars, hood hinges, doors. Finally, we found improper a claim for tire -- worn tires, which Mr. Slattery's insurance company sought to have us reimburse them for in as much as they had reimbursed him based upon the statement of the insurance inspector that the tires were worn as the result of misalignment, but that Mr.Slattery -- but that Mr. Slattery could go after Aaacon, to use their words.

Q I think we have covered that point. Is there anything else in connection with Slattery?

Mr. Browning: Just a minute. Mr. Examiner, I object to that kind of question.

Mr. Kiel: All right. I will let the witness go on, if you would like. May my remarks be withdrawn, Mr. Examiner.

Exam. Reilly: It will be difficult.

A Our final conclusion with regard to the claim of Mr. Slattery and the circumstances surrounding it is that this claim borders on fraud, both against Aaacon and the insurance company and is the sort of matter that should be brought to the attention of the Commission which has indicated in 340 ICC that it wishes to take action against shippers who make misrepresentations and seek excessive claims of the type which we feel this is an example of.

Q Would you tell us your conclusions and beliefs as to the validity of the claim of Mr. Browder?

A We feel that Mr. Browder's claim was not proper, that is to say, that it was based upon the fact that this vehicle had suffered a mechanical defect without the carrier 's fault or any indication of driver negligence. Our investigation revealed that the car was in poor condition when received by us, which is evidenced by the mechanical parts and the replacement thereof prior to the second mishap with the vehicle. We feel that the claim was properly declined on that basis.

Q With respect to the Levy claim, would you give us your conclusion as to the validity of the amount of the claim of Levy?

A We have no contest with regard to the actual repairs undertaken on the Levy vehicle, however, we do feel that the addition on of some $50,000 to that amount is unwarranted and is overreaching.

Q With respect to the Singpurwalla matter, could you tell us what your conclusions and belief as to the validity of the complaint asserted in that matter?

A Our conclusion with regard to Mr. Singpurwalla was that the items claimed by him were by and large wear and tear items and that the issue of the interior of the car bing dirty was not a proper claim item, although it is not the sort of delivery that we like to have our company make, and that we feel that in light of the fact that there was no substantiation nor any proper claim as to an amount that we could not, by law, voluntarily make payment of any sort to Mr. Singpurwalla.

Q Would you advise us as to the conclusion and belief that you drew from the information you developed in connection with the Jean Blake White claim?

A Our conclusion with regard to the Jean Blake White claim was that we were not responsible for the mechanical break down of the engine of Mrs. White's car, that there was no evidence of carrier fault or negligence on the part of the driver, and in light of the fact that we stood ready at all times to retransport the car upon the proper payment of the repair expenses, and in light of the further fact that we did,, in fact, make refund of that part of the tariff charges which were not earned by our company, and in light of the final fact that we did offer to make reimbursement to Mrs. White for any claim for repairs in excess of a fair amount which could be asserted or substantiated by her, that we had discharged any obligation we had in that matter.

With regard to the transportation, we found that we were in the position of not being able to further transport Mrs. White's car without her paying for the repairs because the garage would not release it, and despite our urging, over a long period of time, that Mrs. White pay this amount, which is much less than the amount she testified as to the value of her car, that her course of conduct was imprudent and impractical and resulted in the loss of the value of the car on her part, which could have been avoided.

Q With respect to the Louis Nadler claim, would you tell us what the conclusions that you drew as to the validity of the claim and the amount thereof in that matter?

A As to the Louis Nadler claim, our conclusions were that our liability for the damages was questionable and that before we could make voluntary payment, we should have a legal determination of the issues raised in that matter. In light of the actions taken on the part of the insurance company for Mr. Nadler, in the course of the litigation, our conclusion is that perhaps a large part of these claims are unsubstantiable in as much as they have resisted beyond lawful means the fair examination of the evidence which would lead to a conclusion as to the nature of the damage.

Q Would you tell us the conclusion and beliefs that you come to as a result of the assertion and claims of Irving Moross?

A Our conclusions with regard to Mr. Moross' claim and the result of our investigation, the correspondence, our telephone conversations with him and his appearance at this proceeding, is that his claim was false and did not arise -- and that no occurrence for which a carrier could be responsible arose, and part of the basis of our belief was the fact that despite the car coming in a day after the estimated due date, which said delay was caused by a starter repair which Mr. Moross was not only aware of, but has accepted final responsibility without question, he has asserted among other things a $10.00 car rental, despite the further fact that he alleged during his testimony that bills and other written substantiation of the damage, the alleged damage to his car was available . He has failed and refused to make this material available to us. In light of the fact that no claim was asserted by Mr. Moross for over a two-month period, nor was any communication made to us of any dissatisfaction, it is our belief that when Mr. Moross received the ticket, he took this small item of liability on the part of our company as an opportunity to seek monetary reimbursement for real or imaginary refinishing of his car.

Mr. Browning: He is probing into the mind of the individual who is making the claim.

The Witness: That's just what we are doing.

Exam. Reilly: The objection is sustained, the testimony is stricken.

Mr. Kiel: May I be heard?

Exam. Reilly: No.

Mr. Kiel: May I ask that you reconsider your ruling in view of your rulings previously in this manner, and I remind the Examiner respectfully that in connection with an objection that I made at Page 291 of the record with respect to the testimony of a witness testifying as to his belief, Mr. Browning indicated that he thought that a witness could state whether or not he believes something, and you ruled, "this is his belief, he may so state," my position is that if the witnesses of the Bureau are permitted to state their beliefs, there is no reason why a witness for the Respondent may not do so. I ask that you reconsider your ruling.

Exam. Reilly: I have reconsidered it. I don't know the circumstances of what the prior ruling is. I have reconsidered it and I still sustain the objection.

The Witness: If I may finish my conclusion then with regard to the Moross claim. My conclusion is that not only is the claim not justified, but the fact suggest material which is appropriate for the Commission to conduct further investigation on the question of whether or not a shipper fraud has occurred.

Q Now, next, sir, refer to the testimony of the witness Klausner, who appeared in this proceeding. Do you recall that testimony?

A Yes, sir.

Q Was it correct that your company rejected the claim of Mr. Klausner based upon the information that he originally submitted to you?

A Yes, sir.

Q Did you hear Mr. Klausner when he testified and explained in detail what had occurred?

A Yes, sir.

Q What, if anything, did you do at that time?

A Subsequent to that time, we settled his claim in full because at the hearing he presented for the first time evidence which he had alluded to earlier, but had never substantiated to the fact that one of our offices retained, inadvertently possession of his keys. Based on that we felt that the obligation of our company existed for any mechanical defect resulting from use of wire starting of his vehicle.

Q Shortly after the car was transported in 1970, did you have correspondence with Mr. Klausner?

A Yes.

Q And in an attempt to secure substantiation of his claim as was then filed?

A Yes, sir.

Q Did you get such substantiation?

A No, sir, not sufficiently.

Q After hearing the testimony, did you form a belief and opinion with respect to the validity of that claim?

A Yes, sir.

Q What was that?

A We felt that it was a valid claim and that at the time of the hearing it was amply substantiated and based upon that substantiation, it was the proper obligation of our company

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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Q [illegible]

A [illegible]

Q [illegible]

A [illegible]

[illegible]

[illegible]

[illegible]

Q [illegible]

A [illegible]

Q [illegible]

A [illegible]

[illegible]

Q In any event, sir, even if it was determined that the complaint of Mr. Clendenon was justified and that you were legally responsible for it, could you voluntarily pay the claim without receiving a written claim for money damages from the claimant?

A No, sir. The only thing we received from the claimant aside from his letter statement was the bill of lading, which was one of the items that the Commission has indicated in [illegible] constitutes a proper documentation, and that documentation indicated that there was no claim at all.

Q With respect to the complaint of Mr. Clendenon and as a result of your investigation, have you formed an opinion and belief as to the validity of the complaint?

A Yes. It is our belief that there was no evidence submitted to us of driver negligence nor has there been any substantiation of carrier fault, and in fact, the action taken voluntarily, action taken by the Chrysler Corporation which involved an expense to them, seems to indicate to us quite clearly that there was an inherent defect in the transmission which said defect resulted in the car being inoperable, and that this was the sole cause of the damage asserted by Mr. Clendenon, that it was not our responsibility to pay for the repair of cars, and that the inability of Chrysler Corporation to repair same to the satisfaction of Mr. Clendenon in no way reflected upon our company.

Q Sir, I would like to turn next to the testimony of witness Stamford J. Rosen, who appeared in this proceeding. Are you familiar with the facts and details of the matter involving Mr. Rosen?

A Yes, sir.

Q First, with respect to the testimony of Mr. Getler, the driver who appeared here this week, did you hear his testimony?

A Yes, sir.

Q Have you examined your claim and familiarized yourself with the background of this matter?

A Yes, sir.

Q Would you briefly, attempting to avoid discussion of those things testified to by Mr. Getler, give us the information that you have in connection with this matter?

A As to Mr. Rosen testifying with regard to two claims --

Q First, with respect --

A -- with regard to his own claim, Mr. Rosen asserted to us that he had never received a bill of lading. We wrote to him on June 1, 1971, and indicated firstly that a bill of lading had been given to Catherine P. Rosen at the time of the pick up of the car by our company, and a bill of lading was tendered to her and signed by her at the time the car was delivered to her in Texas. A similar bill of lading, I might note, had been given to Mr. Rosen's brother-in-law.

Q Let's not get into that right now. Stay with the mirror problem. How soon after the delivery was completed, as described by witness Gotler, was the claim asserted by Mr. Rosen with respect to the mirror control?

A It was over two weeks later.

Q Did an examination of your records indicate that any notation of that claimed damage at delivery?

A No, sir.

Q What was your action with respect to that claim?

A In the absence of there being any indication whatsoever that the car had been involved in any accident, or that any action had been taken on the part of the driver with regard to the mirror,or any indication of any connection at all between the transportation of the car and the alleged damage to the slave device, to use Mr. Rosen's words, in the mirror, we declined the claim.

Q Did you write to Mr. Rosen on June 1, 1971?

A Yes.

Q And give him certain of the information as you have just described it?

A Yes, sir.

Q I show you a copy of a letter and ask if this was taken from your file and represents a copy of a letter sent to Mr. Rosen?

A Yes, it does.

Mr. Kiel: May I ask that that be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 299.

(Respondent's Exhibit No.299, Witness Zola, was marked for identification.)

Q In your relations with Mr. Rosen, would you advise us whether or not you ever indicated whether or not your company was responsible for the actions of the driver?

A We indicated to him that we were responsible.

Q Have you formed an opinion and belief with respect to the propriety of the claim of Mr. Rosen?

A Yes, sir.

Mr. Browning: I object unless we know the basis of this.

Q Based upon your investigation of all of the facts in your files and records, and hearing the testimony of the driver and Mr. Rosen.

A Yes, sir.

Mr. Browning: Further, I object because I haven't -- I don't believe we have had any evidence up to now as to what, if any, investigation he conducted.

Exam. Reilly: I think it is clear that all he has done is look at what is in his files and listen to the testimony of two witnesses. On the basis of that, I don't think he is in any more of a position to state -- to answer the question than anybody in the room. I will sustain the objection.

Q Mr. Zola, what investigation did your company make with respect to the propriety of the Rosen claim for injury to his mirror?

A We interviewed the driver, we undertook extensive correspondence with Mr. Rosen, we asked him to substantiate his claim, we reviewed such substantiation, such alleged substantiation as he cared to submit, we tried to investigate to find out if there was any accident. We found there had been no accident with regard to the car involving any other person or object. We had telephone conversations with Mr. Rosen. I had some personnel --

Q Based upon these --

Exam. Reilly: This is already in the record by the person who is in a better position to know these things, the driver and Mr. Rosen.

Mr. Kiel: Yes, sir, but Mr. Examiner -- I appreciate that. My question then is that based upon your investigation of this matter as indicated, will you tell us what the conclusions and belief you had in connection with the validity of the claim.

Exam. Reilly: The conclusion was he didn't think the claim was valid and he denied it. I think we are wasting a lot of time. You are just rehashing the testimony and it is all in the record. Obviously if he denies a claim, he believes it is a claim that should be denied. I don't think we have to go through all of this anc clutter up the record with a lot of words.

The Witness: There is additional information.

Mr. Kiel: Mr. Examiner, I believe it is essential.

Exam. Reilly: Why is everything essential or vital? Vital is alive, the antonym is dead. Every issue can't be vital.

Mr. Kiel: The reason is, Mr. Examiner, is that the investigation is with respect to the reasonableness of the action or failure to act of the Respondent.

Exam. Reilly: Oh, I think it is in the record so many times, Mr. Kiel.

The Witness: Perhaps this is inappropriate, but just in response, there is additional material which was the basis of our conclusion which has not been brought out.

Q Will you tell us if you have any other material, Mr. Zola?

A Yes. Mr. Rosen testified with regard to his claim and the claim of his brother-in-law, Mr. Redlin that his sole interest in appearing at the hearing was for the public good and not that -- that he was not seeking at this time any compensation.

Exam. Reilly: Let's cut it off. I will let you answer the question not because I think it is proper, but simply because we are just wasting time and prolonging the record.

Go ahead and answer the question, but I want it to be clear that this is the reason I am permitting you to answer it.

A However, in a letter dated March 5, 1971, which was received by the Interstate Commerce Commission on March 7, 1971, contrary to that statement, Mr. Rosen states in part "Both Mr. Redlin and I' -- then he goes on to say "desire" -- both Mr. Redlin and I desire Aaacon to compensate us in the sum set forth in previous letters. In addition, we desire any and all statutory and exemplary damage to which we may be entitled under the statutes and regulations of your agency."

Q Who was that letter being written to?

A To the Interstate Commerce Commission in Washington D.C.

Q In connection with the Redlin matter which is contained in certain documents in evidence in this proceeding, could you tell us, sir did Mr. Rosen communicate with you in behalf of Mr. Redlin, his brother-in-law?

A Yes, sir.

Q Prior to that time, had Mr. Redlin personally appeared in your San Francisco office and received payment for his claimed damage --

A Yes, sir.

Q -- and executed a release in full settlement thereof?

A Yes, sir.

Q Do you have a copy of that release?

A I do. I have the original.

Q Dated September 4, 1970?

A Yes, sir.

Mr. Kiel: Mr. Examiner, may I ask that an exact copy of the release be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 300.

(Respondent's Exhibit No.300, Witness Zola was marked for identification.)

Q In substantiation of the payment of $3.25 as shown in Exhibit 300, did your company receive from Mr. Redlin an estimate of the damages for his car?

A Yes, sir.

Q I show you a copy and ask if that is the estimate that you received from Mr. Redlin?

A Yes, sir.

Mr. Browning: Mr. Examiner, before you go any further here, as I recollect the situation, at the time Mr. Rosen was on the witness stand, I was not permitted to get into the Redlin claim by you, and I submit this is all irrelevant and immaterial.

Mr. Kiel: Mr. Examiner, I agree with Mr. Browning. However, there is reference to this matter and the settlement in the written exhibits which are in evidence in this proceeding, and I am not going into this any further. I think we are entitled to get this matter clear at least on the document.

Exam. Reilly: I'll mark it 301 with the understanding that you are going to end the matter right there.

The Witness: This is important, because there is a misstatment here. Mr. Browning, it is true that at the end of the testimony which you are alluding to the objection of Mr. Kiel was sustained. However, if you will go to the next volume of testimony on the next day, when Mr. Rosen reappeared, the Redlin claim was gone into at some length and testimony has been adduced with regard to the Redlin claim, and it is a matter that has been gone into beyond the mere mention of it.

Mr. Browning: All I see on the next volume is cross-examination of Mr. Kiel.

The Witness: When Mr. Rosen returned on a subsequent date, at that time the Redlin claim was gone into and testified to by Mr. Rosen.

Mr. Kiel: I don't plan to go into this any further. Need I answer? Can I go into something else?

Exam. Reilly: Yes. If you don't, we won't get out of here tonight.

Q Next, Mr. Witness, I would like for you to turn to the testimony of General Wolfe and the complaint that he made. Do you recall that testimony?

A Yes, sir.

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(Respondent's Exhibit No.301
Witness Zola, was marked
for identification.)

Q Mr. Zolla, have you familiarized yourself with the testimony of General Wolfe when he appeared in the hearing in Florida and did you hear his testimony?

A Yes.

Q Did your company make any check or investigation of the condition of the engine or the extent of the antifreeze in the radiator when the car was turned over to you?

A No.

Q Under the provisions of your tariff -- are there provisions in your tariff which make this yours or the shipper's responsibility?

A Provisions of our tariff make this the shipper's responsibility with respect to tariff rules 11 and 13.

Q When this car was originally tendered were you able to secure a casual driver in the winter of '69, '70 to take the car and deliver it to Seattle?

A There was some difficulty in securing a casual driver. We were finally able to do so and he departed with the car on December 29th.

Q Were you notified with respect to an occurrence during the transit of the car?

A Yes, the Washington office had notified the Seattle office that the car had been dispatched in response to inquiries by agents of General Wolfe. On the 5th of January, the driver encountered mechanical difficulties with the vehicle, that is to say, engine overheating, and he was -- his actions were to put the vehicle at the side of the road, but prior to this time, the vehicle had overheated and he had brought it into a gas station. The gas station made an examination of it and found nothing wrong. The engine cooled off. They told him it was safe to proceed. He proceeded. Again it overheated, again he took it into a gas station, the same procedure occurred. Again he stopped, he went to the nearest town, which was Waltertown, South Dakota.

Q Was it at that time that the car was towed to Clif's Garage or Service Station?

A Yes, the nearest service station was unable to deal with the type of problem that the car had developed, so that the closest one that could do it was Clif's Service Station and the car was towed into that service station.

Q Do you know what the driver was informed with respect to the condition of the car?

A The car was informed that as a result of the absence of enough antifreeze --

Mr. Browning: I object to this. This is really incompetent evidence. It is hearsay. We don't even know where he got this information, to begin with.

Q Mr. Zola, did you make an investigation to determine the facts about which you are testifying?

A Yes, sir.

Q How did you do it?

A We have telephoned and spoke to the driver on the telephone, and we spoke to the service garage where the car is, that's Clif's Service, to Mr. Clif Szalkowski, the owner thereof.

Q Did you receive a letter from Clif's Service Station dated January 5, 1972, with respect to his opinion as to the condition of the car and what happened which caused the overheating?

A We asked them to put in writing the collaboration of his telephone conversations which had occurred with us over a period of about a year.

Q Is the letter I handed you a letter that you received from Clif's Service Station, the garage to which General Wolfe's car was taken?

A Yes, sir.

Mr. Kiel: May I ask that a copy of that letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 302.

(Respondent's Exhibit No.302, Witness Zola, was marked for identification.)

Q In addition to securing the information from the service station, did you undertake with an investigation to get information from the driver?

A Yes, sir.

Q Did you speak to the driver on the telephone?

A We did at the time of the occurrence and subsequent thereto.

Q Did you thereafter, at the request of Mr. Allen, prepare for him a statement which you mailed to him?

A Yes, sir.

Q I show you this and I ask you if this is the statement that you prepared based on the information that Mr. Allen gave you?

A Yes, sir.

Q Did you receive it back from Mr. Allen?

A Yes, sir, notarized.

Q Did he sign it?

A Yes, sir.

Mr. Kiel: May I ask that that document be marked for identification as Exhibit 303?

Exam. Reilly: Marked Exhibit 303 for identification.

(Respondent's Exhibit No. 303,
Witness Zola, was marked
for identification.)

Q Did you investigate this in an effort to determine whether or not notification was given to any representative of the shipper, who at that time was, I understand it, was in Alaska?

A Yes, sir.

Q By the way, was the location, address or telephone number of the shipper known to you or your representatives during the time that the statement was made?

A No, sir, the only address we had was the destination address of our transportation, which was in Seattle.

Q With respect to your investigation, what did you find concerning notification to the agent or representative of the shipper?

A We had notified the person who General Wolfe had all along been using to contact us, that is to say, Colonel Herbert, and we also notified our Seattle office, which notified the Seattle army agents that were receiving the vehicle for General Wolfe, and they contacted General Wolfe, we know that because he corresponded with us based upon information which we had sent to him.

Q You have a Mr. Walters in your Washington D.C. office?

A Yes, sir.

Q Do you know whether he had conversations and discussions with the shipper?

A Yes, he did.

Q Can you tell us whether or not the shipper was informed that if the car was repaired that you would complete the transport to Seattle?

A We so informed him.

Q Prior to the hearing in Miami, Florida when the shipper, General Wolfe testified, had a written claim for money damage ever been submitted to you by that man?

A No, sir, nor has there been.

Q Is it your statement then that you still have received no claim?

A We have received no claim in writing for a money amount.

Q How long has it been since the time that the agent of General Wolfe was notified with respect to the breakdown of his motor vehicle?

A Just under two and a half years.

Q Is there a provision in the bill of lading in your tariff which requires written notice of the claim to be filed with you within nine months?

A Yes, sir.

Q In January, after the vehicle had become inoperative, did your Mr. Walters write a letter to General Wolfe confirming a telephone call and giving the details concerning the breakdown?

A Yes, sir.

Q I show you a letter and ask if that is a copy of the letter sent by your Mr. Walters to General Wolfe at an army post office address?

A Yes, except the notation at the bottom was made by our New York Claims Office that Mr. Walters should not, in the future, write any claim letters, any letters concerning claims or complaints.

Mr. Kiel: May I ask that a copy of this letter be marked for identification?

Exam. Reilly: Marked for identification as Exhibit 304.

(Respondent's Exhibit No.304, Witness Zola, was marked for identification.)

Q Since you wrote or you advised Mr. Walters that he was not to write to General Wolfe with respect to claims, did you?

A Yes, sir.

Q I show you a letter of January 30th, on your letterhead, addressed to General Wolfe, and ask you if that is a copy of a letter that you sent to General Wolfe?

A Yes, sir, that is.

Q There is a 1964 written on there. Does that have any meaning?

A I wrote that in much later. It has no meaning. It wasn't part of the original letter.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 305.

(Respondent's Exhibit No.305, Witness Zola, was marked for identification.)

Q I would assume that the letter of January 30th, Exhibit 305, was not to General Wolfe's satisfaction; am I correct?

A You are correct. Our correspondence with General Wolfe, some of which would be made available --

Mr. Browning: Objection. Not responsive.

A You are correct.

Exam. Reilly: He is not answering the question.

The Witness: I stopped.

Mr. Kiel: Was that okay up to where he stopped?

Exam. Reilly: I will sustain your objection if that's what you are waiting for, Mr. Browning.

Mr. Browning: I object.

A Yes, we corresponded with him.

Q Did you also correspond with Mr. Tomany about this matter?

A Yes, sir.

Q I have a copy of a letter that you wrote to Mr. Tomany on February 6, 1970, and ask if that is a copy of a letter that you wrote to Mr. Tomany about this matter?

A Yes, sir.

Mr. Kiel: I ask that that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 306.

(Respondent's Exhibit No.306, Witness Zola, was marked for identification.)

Q Did you then thereafter, shortly thereafter, write to General Wolfe again on February 10th?

A Yes, sir.

Q Is this a copy of your letter to the General?

A It is.

Mr. Kiel: I ask that a copy of that be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 307.

(Respondent's Exhibit No.307,
Witness Zola, was marked
for identification.)

Exam. Reilly: Let's go off the record for a minute.

(Discussion off the record.)

Q Did the General reply to your letter?

A He did.

Q And then did you reply to his next letter?

A We did.

Q I show you a letter of February 27th and ask if that's a copy of your reply to General Wolfe with a copy to Mr. Tomany?

A It is.

Mr. Kiel: I ask that that response be marked for identification.

Exam. Reilly: Marked for identification as Exhibit 308.

(Respondent's Exhibit No.308,
Witness Zola, was marked
for identification.)

Q Were there further letters between you or among your company, General Wolfe and Mr. Tomany, culminating in your further letter to General Wolfe on April 8, 1970, with a copy to Mr. Tomany?

A Yes, there were others in between, but that was the